

1 STATE OF MINNESOTA DISTRICT COURT

2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

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4 The State of Minnesota,

5 by Hubert H. Humphrey, III,

6 its attorney general,

7 and

8 Blue Cross and Blue Shield

9 of Minnesota,

10 Plaintiffs,

11 vs. File No. C1-94-8565

12 Philip Morris Incorporated, R.J.

13 Reynolds Tobacco Company, Brown &

14 Williamson Tobacco Corporation,

15 B.A.T. Industries P.L.C., Lorillard

16 Tobacco Company, The American

17 Tobacco Company, Liggett Group, Inc.,

18 The Council for Tobacco Research-U.S.A.,

19 Inc., and The Tobacco Institute, Inc.,

20 Defendants.

21 - - - - -

22

23 DEPOSITION OF DAVID WILSON

24 Volume II, Pages 255 - 496

25

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1 (The following is the continued deposition
2 of DAVID WILSON, taken pursuant to Notice of Taking
3 Deposition by Rule 30.02(f), by videotape, at the
4 offices of Simpson Thacher & Bartlett, Attorneys at
5 Law, 425 Lexington Avenue, New York, New York, on
6 August 15, 1997, commencing at approximately 8:31
7 o'clock a.m.)

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14 ALSO PRESENT:

15 Martyn Gilbey

16 British-American Tobacco Company Limited

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1 P R O C E E D I N G S

2 (Witness previously sworn.)

3 DAVID WILSON

4 called as a witness, being previously

5 sworn, was examined and testified

6 as follows:

7 ADVERSE EXAMINATION (cont'd)

8 BY MS. WIVELL:

9 Q. All right. Good morning, sir. You understand
10 you're still under oath; right?

11 A. I do, yes.

12 Q. All right. Yesterday I had asked you to see if
13 you could find out the answers to some questions I
14 had asked that you didn't know, and I would like to
15 start this morning by finding out whether you have
16 found out the answer to any of those questions.

17 A. Inquiries have been made overnight and we
18 haven't got the answers yet, but we may have some
19 answers for you in the course of this morning.

20 Q. All right. So you --

21 So you don't have any additional information to
22 any of the questions that I asked yesterday that you
23 weren't able to -- to answer?

24 A. Not at this particular time.

25 Q. All right.

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1 MS. McGARRY: I think the only information
2 we have is you had asked what Carl Schoenbachler
3 meant when he used a certain phrase in a document
4 he'd written, and we have ascertained that
5 Mr. Schoenbachler has never worked for B.A.T.
6 Industries; he's a B&W employee. And you also asked
7 some questions about the CAC, and the person most
8 knowledgeable about that would be Martin Broughton,
9 who you've already deposed, and in fact you asked the
10 very question you wanted Mr. Wilson to get the answer
11 to to Martin Broughton.

12 MS. WIVELL: I also yesterday asked for a
13 copy of affidavits that Mr. Wilson had filed in the
14 Pennsylvania case, and I was told there were none. I
15 have since reread the Arch decision filed in the
16 United States District Court for the Eastern District
17 of Pennsylvania, and it refers to not one, but two
18 affidavits from Mr. Wilson, one apparently filed in
19 opposition and then one filed in rebuttal, and I
20 again ask for those affidavits. I asked to be
21 provided a copy of them before the deposition began
22 today, and my request was met with silence. I would
23 like to have a copy of those affidavits.

24 MS. McGARRY: I think you misunderstood
25 me. What I said yesterday, certainly Mr. Wilson has

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1 filed an affidavit and a rebuttal affidavit in the
2 Arch case, where the judge granted B.A.T. Industries'
3 jurisdiction motion. What I said was that neither of
4 those affidavits addressed the TSRT.

5 Yesterday you had represented to Mr. Wilson that
6 he had filed an affidavit in that case addressing the
7 R -- TSRT. I think you've misread the Arch opinion.
8 The affidavit evidence in that case relating to the
9 TSRT was given by Professor Stobaugh, an expert who
10 plaintiffs will be deposing in this case.

11 MS. WIVELL: Well I don't believe --

12 MS. McGARRY: Excuse me, I wasn't
13 finished.

14 MS. WIVELL: Oh, I'm sorry. You stopped so
15 I assumed you had finished.

16 MS. McGARRY: I don't see either of the
17 Arch affidavits on the predesignation list and I
18 don't think you'll be using them to impeach
19 Mr. Wilson and I don't think we're required to do
20 your work product for the plaintiffs, do your
21 research and get documents for you to use, so I will
22 provide those to you after the deposition today, but
23 not before the deposition concludes.

24 MS. WIVELL: All right. Well first of all,
25 I did not ask specifically about TSRT with regard to

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1 those affidavits. That's number one. You're
2 mischaracterizing what happened yesterday.

3 Number two, Wilson affidavits are on the
4 supplemental, if not the original, predesignation
5 list, and I would appreciate receiving them so that I
6 can ask him questions about them, especially since
7 they concern subjects relating to the subject matter
8 of this deposition, and I had asked for them
9 yesterday and was told that there were none.

10 MS. McGARRY: We've never received a
11 supplemental designation list --

12 MS. WIVELL: You were --

13 MS. McGARRY: -- for David Wilson.

14 MS. WIVELL: Oh, I'm sorry, not for David
15 Wilson. Then it was on the original one. It's right
16 at the top of the list.

17 MS. McGARRY: Yeah, it says "Affidavit of"
18 David "Wilson."

19 MS. WIVELL: Uh-huh, that's right. It
20 doesn't say which affidavit, does it, ma'am?

21 MS. McGARRY: No, it doesn't identify the
22 case. I assumed you were talking about in this
23 case. We will not be providing you with these scores
24 of affidavits Mr. Wilson has filed in other cases.

25 MS. WIVELL: Oh, I'm not asking for the

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1 scores of affidavits. I'm asking for the affidavits
2 I was told yesterday didn't exist.

3 MS. McGARRY: If you misunderstood me, I --

4 MS. WIVELL: No, ma'am, I didn't
5 misunderstand you. I knew exactly what I was talking
6 about and checked it and found out that you did
7 indeed misrepresent to me on the record yesterday
8 that whether he had filed an affidavit in
9 Pennsylvania.

10 MS. McGARRY: Are you done?

11 MS. WIVELL: Oh, yeah, I'm done.

12 MS. McGARRY: I'm sorry if you
13 misunderstood. I meant to convey to you that we
14 couldn't find any reference in those affidavits to
15 the TSRT, which is what you represented to
16 Mr. Wilson, he had sworn an affidavit concerning the
17 TSRT, and then proceeded to ask him who he talked to
18 to get the information he put in his affidavit.

19 Just to be absolutely clear, there are two
20 Wilson affidavits in the Arch action in
21 Pennsylvania. Neither of them refers to the TSRT.

22 MS. WIVELL: All right. But they do refer
23 to jurisdiction matters, and that's what I was asking
24 about yesterday and will continue to ask about today,
25 but just so the record is clear, you have refused to

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1 provide them to me, so we'll move on.

2 MS. McGARRY: I've refused to provide
3 you -- to you for use at this deposition at this
4 time. I said I would give them to you later, but
5 they aren't -- we weren't given adequate notice you
6 intended to use them and you're not being -- going to
7 be using them for impeachment.

8 MS. WIVELL: Well they're -- affidavits for
9 Mr. Wilson are listed on the list.

10 BY MS. WIVELL:

11 Q. Now, sir, we were talking at the end of the day
12 yesterday about the compendium of epidemiology. Do
13 you recall that, sir?

14 A. I recall our discussion, yes.

15 Q. All right. And Mr. Thornton was involved in
16 that compendium, wasn't he, sir?

17 A. The note of the meeting between Sir Patrick
18 Sheehy, Mr. Bruell and Mr. Thornton would suggest
19 that Mr. Thornton was involved in that compendium.

20 Q. Well, sir, you know for a fact that Mr. Thornton
21 was involved, weren't you, sir?

22 A. I know --

23 MS. McGARRY: Objection.

24 A. I know only from the documents that I saw.

25 Q. You know, sir, that Mr. Thornton kept Mr. Sheehy

1 apprised of matters relating to the epidemiological
2 compendium; correct?

3 MS. McGARRY: Can you lower your voice,
4 Ms. Wivell.

5 MS. WIVELL: I'm sorry, I'm not speaking
6 loudly, ma'am.

7 MS. McGARRY: Oh, it seems that way to me.
8 You may be angry at me, but that's no reason --

9 MS. WIVELL: Oh, I'm not angry at anyone --

10 MS. McGARRY: -- to be nasty to Mr. Wilson.

11 MS. WIVELL: -- and I'm not being nasty to
12 anyone. And I think the --

13 MS. McGARRY: Please don't interrupt me,
14 Ms. Wivell.

15 MS. WIVELL: -- I think the record will
16 reflect I'm not yelling, raising my voice or anything
17 like that. I'm asking questions, and I'd prefer to
18 get on with it, ma'am. If you have trouble, then
19 make an objection.

20 MS. McGARRY: I find your voice
21 unnecessarily loud and I'm asking you to lower it.

22 MS. WIVELL: Well perhaps it's because I
23 have a hearing problem and sometimes I don't know how
24 loud I'm speaking, but I'm --

25 MS. McGARRY: That's why I'm advising you.

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1 MS. WIVELL: -- speaking in a normal tone
2 of voice for me.

3 MS. McGARRY: Well your normal tone of
4 voice --

5 MS. WIVELL: Well the record will
6 reflect --

7 MS. McGARRY: -- I think is unnecessarily
8 loud.

9 MS. WIVELL: -- that, I think. The
10 videotape will be perfectly fine and it will show
11 I'm -- that all you're doing is creating controversy
12 when none exists.

13 MS. McGARRY: Can we agree not to interrupt
14 each other for the rest of the deposition,
15 Ms. Wivell?

16 MS. WIVELL: Well if you'll do it, I'm --
17 I'm happy.

18 BY MS. WIVELL:

19 Q. Sir, let me go back to my question since I was
20 interrupted in asking it.

21 You know that Mr. Thornton kept Mr. Sheehy
22 apprised of matters relating to the epidem --
23 epidemiology compendium; correct?

24 MS. McGARRY: Objection, asked and
25 answered. Go ahead.

1 A. From the document which you presented to me
2 yesterday as an exhibit, it was clear that
3 Mr. Thornton kept Patrick Sheehy apprised of
4 developments concerning the compendium.

5 (Plaintiffs' Exhibit 630 was marked
6 for identification.)

7 BY MS. WIVELL:

8 Q. Sir, showing you what's been marked as
9 Plaintiffs' Exhibit 630, this is a document from
10 B.A.T. Industries Bates numbered 201766407; correct?

11 A. The document bears the Bates number you have
12 given. I do not know whether it is a document from
13 B.A.T. Industries.

14 Q. It says so at the bottom of the page, "BAT
15 INDUSTRIES - MINNESOTA TOBACCO LITIGATION," doesn't
16 it?

17 A. It says -- yes, it says "BAT INDUSTRIES -
18 MINNESOTA TOBACCO LITIGATION."

19 Q. All right. And there is a note to Patrick
20 Sheehy on the first page from E. A. A. Bruell;
21 right?

22 A. Yes, there is.

23 Q. And it notes that he was asked to be kept
24 informed of -- of how the Compendium of
25 Epidemiological Studies was progressing; right?

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1 MS. McGARRY: Objection, ambiguous.

2 A. Could you repeat the question, please.

3 Q. Certainly. And the memo from Mr. Bruell to
4 Mr. Sheehy notes that Sheehy had asked to be kept
5 informed of how the Compendium of Epidemiological
6 Studies was progressing; right?

7 A. That's what the first sentence says.

8 Q. All right. And, sir, attached is a report from
9 Mr. Thornton on the compendium; correct?

10 A. That's what the second sentence of the note to
11 Mr. Sheehy says, yes.

12 Q. And the note is or --

13 The report is attached, isn't it, sir?

14 A. There is a progress report dated January 1984
15 headed "COMPENDIUM OF OF EPIDEMIOLOGICAL STUDIES."

16 Q. And, sir, isn't it a fact that the chairman of
17 B.A.T. Industries asked that copies of the compendium
18 be sent to various individuals?

19 MS. McGARRY: I'd just like to note for the
20 record that the attachment to the first page of
21 Exhibit 630 was not predesignated and is improperly
22 being used since it's not used for impeachment.

23 A. Sorry, could you read the question back to me,
24 please.

25 Q. Yes, sir, but first I want to respond to that.

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1 MS. WIVELL: I believe that the attachment
2 was predesignated.

3 MS. McGARRY: Well here's the list,
4 Martha.

5 MS. WIVELL: Fine. Look for it under a
6 separate number. Let me repeat the question.

7 MS. McGARRY: While we're at it, your
8 predesignation says "Affidavit," singular, "of" David
9 "Wilson," not "affidavits," plural. I think we'll
10 mark that as an exhibit. You may proceed.

11 MS. WIVELL: Well thank you, Counsel.

12 BY MS. WIVELL:

13 Q. Sir, isn't it a fact that the chairman of B.A.T.
14 Industries asked that copies of the compendium be
15 sent to different individuals?

16 A. Yesterday you showed me a -- a document which
17 was a note of a meeting between Sir Patrick Sheehy or
18 Mr. Sheehy, as I think he then was, Mr. Bruell and
19 Mr. Thornton in which various discussions -- minutes
20 were made of that meeting at which it was noted that
21 the com -- the draft of the compendium would be
22 circulated to various people for comment or for
23 review, including external specialists.

24 Q. And, sir, there's a handwritten note on the
25 bottom of the first page of Exhibit 630 that "EAAB

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1 will circulate note to all CAC participants bringing
2 them up to date"; correct?

3 A. That's what the handwritten note appears to say,
4 yes.

5 Q. And in fact, the Compendium of Epidemiological
6 Studies was circulated to representatives of the
7 various CAC companies; correct?

8 A. I do not know whether --

9 MS. McGARRY: Objection.

10 A. I do not know whether that is the case.

11 Q. The second page of the document in the second
12 paragraph -- no, strike that.

13 (Plaintiffs' Exhibit 631 was marked
14 for identification.)

15 BY MS. WIVELL:

16 Q. Sir, showing you what's been marked as
17 Plaintiffs' Exhibit 631, this is a document Bates
18 numbered 107319203; correct?

19 A. Yes, correct.

20 Q. And it's a memo from Patrick Sheehy to
21 Dr. Thornton; correct?

22 A. Yes. That appears to be the case, yes.

23 Q. And in this memorandum, Mr. Sheehy directs that
24 the compendium be sent to a Professor Burch;
25 correct?

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1 A. I --

2 MS. McGARRY: Objection, mischaracterizes
3 the document. You may answer.

4 A. You've made the very point I would have made.
5 It does mischaracterize the document. The
6 document -- what Mr. Sheehy is saying in the document
7 is that he considers it would be useful if a copy of
8 the second draft of the compendium was sent to
9 Professor Burch.

10 Q. And that --

11 A. It doesn't direct anybody to send a -- the draft
12 to Professor Burch, not in this document at any
13 rate.

14 Q. And it was -- I'm sorry.

15 The compendium was sent to Dr. Burch at
16 Mr. Sheehy's request, wasn't it, sir?

17 A. I have no knowledge of that.

18 (Plaintiffs' Exhibit 632 was marked
19 for identification.)

20 BY MS. WIVELL:

21 Q. Sir, showing you what's been marked as
22 Plaintiffs' Exhibit 632, this is a memo to Mr. Sheehy
23 regarding the Compendium of Epidemiological Studies;
24 correct?

25 A. Subject -- yes, it refers to the Compendium of

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1 Epidemiological Studies. It's the heading of the --
2 of the note.

3 Q. And it --

4 This document is Bates numbered 107319207;
5 right?

6 A. That's correct.

7 Q. All right. And it again discusses sending
8 Dr. Burch a copy of the compendium?

9 MS. McGARRY: Objection.

10 Q. Right?

11 A. It refers to a proposal to send a copy of the
12 second draft of the compendium to Professor Burch
13 with a view to getting an informal opinion from him.

14 Q. And as you sit here today, you can't tell us
15 whether or not that document was sent to Professor
16 Burch?

17 A. I cannot.

18 Q. You understand that Professor Burch was in the
19 United States, sir; correct?

20 A. At the time that this note was written to
21 Mr. Sheehy by Mr. Thornton from British-American
22 Tobacco Company, BATCO, it appears that Professor
23 Burch was then absent, in the United States.

24 Q. Now the Compendium of Epidemiological Studies
25 was completed and circulated to CAC countries;

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1 right?

2 MS. McGARRY: Objection, CAC companies.

3 And that question's been asked and answered and
4 Mr. Wilson told you yesterday he didn't have an
5 answer and he would try to get it, and he told you
6 this morning that he doesn't have the answer yet and
7 he told you when you asked him the question again
8 this morning he doesn't know. So we're still
9 endeavoring to get the information for you.

10 A. I'm not in a position to say what at the moment
11 the CAC companies were. I'm not sure at what
12 particular time you're referring to, and I simply
13 have no information to confirm or deny what you've
14 said.

15 MS. WIVELL: Mr. LaBorde, could you get out
16 Exhibit 531.

17 (Plaintiffs' Exhibit 531 was handed
18 to the witness.)

19 BY MS. WIVELL:

20 Q. Sir, showing you what's been previously marked
21 as Plaintiffs' Exhibit 531, this is a document that
22 bears the Bates number 304019530 as its beginning
23 Bates number; correct?

24 A. Correct.

25 Q. Would you turn to the page that ends with Bates

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1 number 554.

2 MS. McGARRY: Excuse me. Do you have
3 another copy of it?

4 MS. WIVELL: No, I don't.

5 Q. I'm sorry. It's 534, sir. It's actually the
6 fifth page of the document.

7 MS. McGARRY: I'm going to have to look on
8 with you, David, if you don't mind.

9 THE WITNESS: Yeah, that's fine.

10 A. The pages aren't clearly numbered with the Bates
11 number, so perhaps you could just identify the page.

12 Q. All right. Do you see --

13 Do you have the page that starts at the top
14 "Note for the Tobacco Strategy Review Team Meeting,
15 Progress report on Smoking Issues"?

16 A. Yes, I do.

17 Q. And there it talks about the publication/use of
18 the compendium; right?

19 A. It does, and if you're going to ask me questions
20 on this, I'd like to read the -- the document,
21 please.

22 Q. All right. I suggest -- I'm only going to be
23 asking you questions at this point about this page,
24 so if you could just read the page, I'd appreciate
25 it.

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1 MS. McGARRY: Well if you need to read any
2 more, you can do that.

3 MS. WIVELL: Well that's fine.

4 MS. McGARRY: I'm sure we all know that
5 individual things can be taken out of context.

6 MS. WIVELL: Well I understand, but this
7 document is probably, oh, 40 or 50 pages, so I would
8 hope that he wouldn't need to read the whole thing.

9 MS. McGARRY: When you're done, I'll need a
10 moment to look at it as well.

11 (Witness reviews Plaintiffs' Exhibit 531.)

12 MS. McGARRY: Excuse me.

13 (Ms. McGarry reviews Plaintiffs'
14 Exhibit 531.)

15 MS. McGARRY: Okay.

16 BY MS. WIVELL:

17 Q. Sir, you've now had the opportunity to read the
18 page that concerns publication/use of the compendium;
19 right?

20 A. Yes.

21 Q. Now according to this document, there were four
22 different works that had been presented to the
23 Tobacco Strategy Review Team; right?

24 A. Sorry, I -- can you repeat the question again?

25 Q. All right. Well let me rephrase it.

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1 The Compendium of Epidemiological Studies had
2 been completed at the time this document was written;
3 right?

4 A. I think that's a fair characterization from what
5 the document says, yes.

6 Q. And the compendium was presented to the Tobacco
7 Strategy Review Team?

8 A. It's not clear to me from this particular
9 document that that was the case. What the document
10 says is the -- this document has been circulated to
11 CAC companies and Wills Australia only.

12 Q. All right. And in addition to the compendium,
13 three other documents had been completed; correct?

14 A. That, I think, is a fair characterization again
15 from what the words say here.

16 Q. All right. And it was reported to the Tobacco
17 Strategy Review Team that a document entitled
18 "Smoking and Health: the Unresolved Debate" had been
19 completed and circulated to the CAC and BATCO
20 companies?

21 A. It actually says that the document you've
22 described has been circulated both to CAC and BATCO
23 companies and goes on to say that it is also -- it is
24 to be used both internally and externally and refers
25 in fact to external persons who may receive the

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1 document, which includes, and I quote, "government
2 ministers, regulatory authorities or scientific and
3 medical professionals known to the company," close
4 quote.

5 Q. And do you understand that the booklet entitled
6 "Smoking and Health: the Unresolved Debate" was
7 provided to sources outside of the B.A.T. Group
8 companies?

9 A. I have no specific knowledge as to whether it
10 was or -- or wasn't. I assume from this document
11 that it in fact was.

12 Q. Now, sir, another document that had been
13 developed was entitled "Environmental Tobacco Smoke:
14 the Science"; right?

15 A. The -- the document says that such a document
16 has been circulated to CAC and BATCO companies.

17 Q. And the document the "Environmental Tobacco
18 Smoke: the Science" was circulated to those
19 companies, wasn't it, sir?

20 A. I do not know whether it was or was not.

21 Q. It was redone under the title "Smoking and
22 Health: the Unresolved Debate" to be used outside of
23 BATCO -- or outside of the B.A.T. Group companies;
24 right?

25 A. I'm sorry, I don't understand that --

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1 Q. All right.

2 A. -- that question.

3 Q. Well the page -- the paragraph concerning the
4 document entitled, quote, "Environmental Tobacco
5 Smoke: the Science," close quote, had been made
6 available for external use under the title "Smoking
7 and Health: the Unresolved Debate"; right?

8 A. Yeah, the -- the paragraph says "It is
9 available" -- and I believe that to be a reference to
10 "Environmental Tobacco Smoke: the Science." "It is
11 available for much wider internal and external use
12 than," quote, "'Smoking and Health: the Unresolved
13 Debate,'" close quotes.

14 Q. The fourth document that had been developed was
15 entitled "Environmental Tobacco Smoke: Improving the
16 Quality of Public Debate"; right?

17 A. Could you just read back that question to me,
18 please.

19 Q. Certainly. The fourth document that had been
20 developed was entitled, quote, "Environmental Tobacco
21 Smoke: Improving the Quality" -- I'm sorry, I've lost
22 it. Let me rephrase the question.

23 The fourth document that was developed was
24 entitled, quote, "Environmental Tobacco Smoke:
25 Improving the Quality of Public Debate"; correct?

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1 A. It seems from this document that that document
2 that you've just described was developed.

3 Q. And in fact, a group of firm lawyers,
4 Covington & Burling, had produced a version of the
5 document for use outside of the B.A.T. Group
6 company?

7 A. Well can we just be a bit clear here, please,
8 about what we mean by "B.A.T. Group." It says
9 "non-BAT companies," and I don't know whether this
10 is a reference to companies outside the B.A.T.
11 Industries Group or whether this is talking about
12 whether this is a reference to British-American
13 Tobacco. I don't know what the -- the reference
14 means, but what the words say is "A US firm of
15 lawyers, Covington and Burling, have also produced a
16 version of the document for wider industry use by
17 non-BAT companies that will hopefully be circulated
18 with the help of Infotab."

19 Q. Now what was INFOTAB?

20 A. I do not know.

21 Q. Sir, you would agree that BATCO was charged by
22 B.A.T. Industries to work on R&D objectives. Pardon
23 me. Isn't that true?

24 A. Let's see if I can help you on this. I think
25 the -- the -- the -- the situation regarding B.A.T.

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1 Industries is -- is this: B.A.T. Industries, as I've
2 mentioned I think on numerous occasions, is an
3 investment company. It holds interests in other
4 companies who conduct various businesses. B.A.T.
5 Industries itself doesn't carry on any tobacco
6 business. It doesn't employ scientists. There is no
7 one on the staff that carries out research and
8 development. There is no reason why anyone on the
9 staff should carry out research and development
10 because B.A.T. Industries doesn't make or market
11 cigarette products.

12 Accordingly, it would be natural, it would be a
13 quite logical conclusion to come to that research and
14 development activities to the extent that they were
15 being carried on in the group were being carried on
16 by companies who were in the business -- in the
17 tobacco business. British-American Tobacco Company,
18 BATCO, is an obvious example of that.

19 Q. Move to strike as nonresponsive. My question
20 was a little bit different than your answer, sir.

21 Isn't it a fact that the B.A.T. Industries board
22 charged BATCO with -- or to work on R&D projects?

23 MS. McGARRY: That's a different question,
24 and the previous answer was responsive. You may
25 answer this question.

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1 A. B.A.T. Industries charged BATCO to carry out
2 research and development. The conduct of research
3 and development -- development by BATCO would be, I
4 would have thought, a necessary incident of its own
5 business. Certainly B.A.T. Industries would not have
6 charged BATCO to carry out research and development
7 on behalf of B.A.T. Industries. B.A.T. Industries is
8 not in the business of making and selling cigarettes,
9 and therefore it's not -- it's not a necessary
10 incident of its business that it should conduct
11 research and development.

12 MS. WIVELL: Can we go off the record,
13 please.

14 THE REPORTER: Off the record, please.

15 (Recess taken.)

16 (Plaintiffs' Exhibit 633 was marked
17 for identification.)

18 BY MS. WIVELL:

19 Q. Sir, showing you what's been marked as
20 Plaintiffs' Exhibit 633, this is a document Bates
21 numbered 100593450; correct?

22 A. Correct.

23 Q. It says here at the top of the page "TOBACCO
24 RESEARCH IN BAT INDUSTRIES," doesn't it?

25 A. It does, yes.

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1 Q. And then it says in the first sentence "BATCo
2 has been charged by BAT Industries to define and to
3 progress towards R&D objectives which will give BAT"
4 an -- "a competitive lead in the market place";
5 correct?

6 A. That's what the first sentence says, but I would
7 like to add that the document is headed "DRAFT."

8 Q. All right. Sir, do you have any information
9 as -- no, strike that.

10 Isn't it a fact that not only was B.A.T.
11 Industries charging BATCO with defining and
12 progressing -- no, strike that.

13 Isn't it also true that the Tobacco Strategy
14 Review Team reviewed plans for proposed fundamental
15 research and approved or disapproved those plans?

16 MS. McGARRY: I object. It's beyond the
17 scope of the witness's knowledge as he indicated
18 yesterday, and you've already deposed someone on the
19 TSRT and asked him about it.

20 If you know, you may answer.

21 A. I -- I -- I don't know the answer to that, but I
22 would like to read this document, please, if you're
23 going to ask me questions on it.

24 Q. I'm not going to ask you any further questions
25 on it, sir. Could you turn back to Exhibit 531 and

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1 turn to the eighth page. That page is headed "Note
2 for Tobacco Strategy Review Team Meeting, Proposed
3 Group Fundamental Research Programme and Budget";
4 right?

5 A. That's what the page is headed, yes.

6 Q. All right. Why don't you take a moment and read
7 this page, sir.

8 (Witness reviews Plaintiffs' Exhibit 531.)

9 MS. McGARRY: When you're done, I'll take a
10 look at it, please.

11 (Witness continues reviewing Plaintiffs'
12 Exhibit 531.)

13 MS. McGARRY: Thank you.

14 (Ms. McGarry reviews Plaintiffs'
15 Exhibit 531.)

16 MS. McGARRY: Okay.

17 BY MS. WIVELL:

18 Q. Sir, you have now read the proposed Group
19 Function Research Programme memo; correct?

20 A. "Proposed Group Fundamental Research
21 Programme" --

22 Q. Thank you.

23 A. -- "and Budget."

24 Q. You've now read it, sir, haven't you?

25 A. Yes, I have.

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1 Q. This document was written by Alan Heard?

2 A. I -- I imagine it was. It bears his name at the
3 bottom. It's not signed. It's dated 2nd November
4 1989.

5 Q. And it sets forth proposed projects for the
6 Group Fundamental Research Programme; right?

7 MS. McGARRY: I'm just going to object on
8 the grounds it's beyond the scope of the notice,
9 irrelevant to jurisdiction.

10 A. The second paragraph states "The proposed Group
11 Fundamental Research Programme covers the following
12 (topics" -- "the following (topics" little Roman "i
13 to" little Roman "vi are on-going and were agreed at
14 the 1989 R&D conference and topics vii to x," Roman
15 vii to Roman x, "are recommended as a result of
16 restructuring)." And then it lists a number of
17 projects, i through x.

18 Q. And this memo was presented to the Tobacco
19 Strategy Review Team for its approval; correct?

20 A. I think that's something of a
21 mischaracterization of the document. I don't see in
22 here -- and correct me if I'm wrong, please, but I
23 don't see in here a request for sanction by the
24 Tobacco Strategy Review Team. This appears to me to
25 be a note by way of information, and in fact, if one

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1 looks at the second paragraph of the document, which
2 I referred to earlier, it says "The proposed Group
3 Fundamental Research Programme covers the
4 following." It says "topics i to vi are on-going and
5 were agreed at the 1989 R&D," which I take to be
6 "research and development," research and development
7 "conference."

8 So clearly it's -- it's quite clear from the
9 face of the document that certainly with respect to
10 items i through vi, this is not a recommendation to
11 the TSRT to approve the program and budget.

12 Q. Sir, have you read the notes of the -- the
13 Tobacco Strategy Review Team meeting at which this
14 was presented?

15 A. I --

16 MS. McGARRY: Objection, asked and answered
17 yesterday.

18 A. I have not.

19 Q. All right. Now it was clearly presented or
20 going to be presented according to the agenda that's
21 the first page of Exhibit 531; right?

22 MS. McGARRY: Objection. We're asking the
23 witness to speculate. This doesn't have anything to
24 do with jurisdiction. You're talking about BATCO
25 research, and you've already deposed someone about

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1 the TSRT.

2 MS. WIVELL: I object to your violation of
3 the court's order.

4 MS. McGARRY: I'm not violating the order.
5 I'm listing my objections succinctly.

6 A. Could you please repeat the question.

7 Q. Certainly. It was presented to the Tobacco
8 Strategy Review Team, wasn't it, sir?

9 MS. McGARRY: Same objections.

10 A. I -- I -- I do not know. The -- if this paper
11 is the paper which is referred to in item number five
12 on the agenda --

13 Q. Item number five on the agenda states --

14 MS. McGARRY: Please --

15 Q. -- "Proposed Group fundamental research
16 programme and budget," doesn't it, sir?

17 MS. McGARRY: Excuse me. I don't think the
18 witness had finished his answer. Had you?

19 THE WITNESS: I hadn't, no, in fact.

20 MS. McGARRY: Okay. We'll go back to --

21 I'll read you the question and the answer up to as
22 far as you'd gotten. The question was: "It was
23 presented to the Tobacco Strategy Review Team, wasn't
24 it, sir?" And you said, "I ... do not know. The --
25 if this paper is the paper which is referred to in

1 item number five on the agenda --"

2 A. I would have continued: Then it is not
3 unreasonable to assume that it was presented, but I
4 have not seen the minutes that followed the proposed
5 meeting, so I cannot say for sure.

6 (Plaintiffs' Exhibit 634 was marked
7 for identification.)

8 BY MS. WIVELL:

9 Q. Sir, showing you what's been marked as
10 Plaintiffs' Exhibit 634, this is a document bearing
11 the Bates number 201831067; right?

12 A. Yes, it is.

13 Q. And it is the minutes of the 12th meeting of the
14 Tobacco Strategy Review Team held on November 10th,
15 1989?

16 A. Yes, that's what it appears to be.

17 Q. And if we go back to Exhibit 531, Mr. Heard's
18 memo was dated November 2nd, 1989, right, on the
19 ninth page of the document?

20 A. Sorry, I'm just trying to find the right --

21 Q. Yeah.

22 A. Mr. Heard's memo was --

23 Mr. Heard's paper was dated 2nd November 1989.

24 Q. And if we go back to the first page of
25 Exhibit 531, there is a agenda for the meeting of the

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1 Tobacco Strategy Review Team to be held on
2 November 10th, 1989; right?

3 A. I think that's a fair characterization, yes.

4 Q. So Exhibit 634 would be the minutes of the
5 meeting that were held that correspond with the
6 agenda on the first page of Exhibit 531?

7 MS. McGARRY: Objection. The document
8 speaks for itself. You're asking the witness things
9 beyond his personal knowledge and you've already
10 deposed someone on the TSRT.

11 MS. WIVELL: Well I'm not deposing the
12 witness personally. I'm deposing B.A.T. Industries,
13 Counsel, so I suggest you keep that in mind.

14 A. Assuming these are not a draft, they would
15 appear to be the minutes of the 12th meeting of the
16 Tobacco Strategy Review Team held on 10th November
17 1989.

18 Q. And isn't it a fact that at this meeting the
19 Tobacco Strategy Review Team accepted the proposal
20 made by Mr. Heard that is listed in his memo which is
21 on the eighth and ninth pages of Exhibit 531?

22 MS. McGARRY: Same objections.

23 A. I'd like to please take time to read these
24 minutes. I haven't seen them before, and if you're
25 asking me questions, I really do need to read the --

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1 read the minutes.

2 Q. Let me direct your attention to point 27,

3 please. Feel free to read that page.

4 MS. McGARRY: No, feel free to read any

5 page you feel you need to read to answer questions on

6 the exhibit.

7 (Witness reviews exhibits.)

8 A. Could you let me have the question again,

9 please.

10 MS. McGARRY: I'm just first also going to

11 direct the witness's attention to paragraph 25, which

12 refers to Mr. Heard's fundamental research.

13 Q. Sir, isn't it a fact that the Tobacco Strategy

14 Review Team approved or accepted the proposals which

15 Mr. Heard wrote -- I'm sorry, which Mr. Heard

16 presented to them?

17 MS. McGARRY: Objection, overbroad and the

18 other objections I've previously made.

19 MS. WIVELL: Which I haven't a clue what

20 they are, so please state them.

21 MS. McGARRY: The document speaks for

22 itself; the witness has no knowledge; and B.A.T.

23 Industries has already produced to you an individual

24 knowledgeable about the TSRT, who you have deposed on

25 this subject.

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1 A. Well I said in a previous answer that this did
2 not appear to me to be a request for approval from
3 the TSRT, and while you directed my attention to
4 minute 27, the relevant minute in regard to the
5 document that you're asking me questions about, which
6 comes from Exhibit 531, appears to be covered by in
7 fact minute 25.

8 Q. And in fact there at --

9 A. I hadn't --

10 Q. Oh, I'm sorry.

11 A. I'm sorry, excuse me.

12 Q. You stopped so I --

13 A. I hadn't -- I hadn't finished my -- yeah, I
14 hadn't finished my answer.

15 Q. -- assumed you were done.

16 A. Can you just read back to me what I just said,
17 please.

18 MS. McGARRY: "Well" as "I said in a
19 previous answer that this did not appear to me to be
20 a request for approval from the TSRT, and while you
21 directed my attention to minute 27, the relevant
22 minute in regard to the document that you're asking
23 me questions about, which comes from Exhibit 531,
24 appears to be covered" in fact by "minute 25."

25 A. Of the Exhibit 634, and what minute 25 says is

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1 that the team supported the program and -- and the
2 proposed allocation of charges. It doesn't say that
3 the team approved the program, and I'd also just like
4 to refer to the team. And these minutes are dated
5 1989, and the team includes people who were at that
6 time the -- the membership appears at any rate to
7 include people who were at that time the chief
8 executive officers of Brown & Williamson; of B.A.T.
9 Cigarettenfabriken, which is a German operation, a
10 German company manufacturing tobacco products; of
11 Souza Cruz, which is a Brazilian company
12 manufacturing tobacco products, all of which are
13 subsidiaries of -- ultimately owned by B.A.T.
14 Industries and were ultimately owned by B.A.T.
15 Industries at that time; of Mr. John Louie Mercier,
16 who was I believe at that time the chief executive of
17 Imperial Tobacco Canada; Mr. B. D. Bramley, who was
18 the chief executive officer of British-American
19 Tobacco; and also in attendance were Mr. Hank Frigon,
20 who was the president and -- I think he was the
21 president of BATUS, the holding company in the U.S.
22 of Brown & Williamson; and Mr. Rombaut, who was
23 connected with Souza Cruz; and Mr. Crawford, who I
24 believe at that time was the chairman of Imasco, the
25 Canadian corporation which is the parent company of

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1 Imperial Tobacco.

2 Q. Move to strike as nonresponsive. Sir, the
3 minutes --

4 MS. McGARRY: If you'd like, we can just
5 stipulate that you don't have to make that motion;
6 it's preserved for all answers.

7 Q. Sir, the minutes state that the team supported
8 the program; correct?

9 A. The team supported the -- the program.

10 Q. And you have no knowledge as you sit here today
11 of anything contrary to that, do you, sir?

12 A. I have -- I don't really understand the
13 question. The words, I think, speak for themselves.
14 "The team supported the programme," that's what the
15 words say.

16 Q. And sitting here today, you have no information
17 to the contrary, do you, sir?

18 A. To the contrary, that the team did not support
19 the program?

20 Q. That's right.

21 A. I have no knowledge to -- to that effect, no.

22 Q. Now, also the Tobacco Strategy Review Team heard
23 a presentation on the organization and structure of
24 R&D for tobacco; right?

25 A. It says it in minute 27, "Mr. Heard presented a

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1 paper on the Structure and Organisation of R&D for
2 tobacco."

3 Q. And those recommendations were accepted by the
4 team, weren't they?

5 A. The main recommendations of the paper, the main
6 recommendations of the paper, whatever they may be --
7 I haven't seen them -- were accepted.

8 Q. And you have no information that contradicts the
9 fact that --

10 A. Could I --

11 Q. Excuse me.

12 A. Sorry, I --

13 Q. May I finish?

14 A. I hadn't finished my previous answer.

15 Q. Oh, I'm sorry.

16 A. I do -- I do --

17 Q. When you stop, sir, it's hard for me to -- to
18 read your mind and know that you're going to start
19 again.

20 A. Sorry, I'm -- I'm --

21 MS. McGARRY: Well he's just pausing, so
22 maybe you could give more time to make sure the
23 answers are done or ask if it's unclear.

24 THE WITNESS: Can -- please could you just
25 read back to me what I had answered.

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1 MS. McGARRY: "The main recommendations of
2 the paper, the main recommendations of the paper,
3 whatever they may be -- I haven't seen them -- were
4 accepted.

5 "And you have no information that contradicts
6 the fact that --" and then excuse me, can I finish,
7 you said. So it ended with "I haven't seen" --

8 A. And I was going to go on to say: "... and it
9 was noted" -- and I'm quoting from the document --
10 "... and it was noted that" the -- "that resulting
11 from the proposals, Group fundamental research would
12 be concentrated at Southampton."

13 Q. Now, sir, the Tobacco Strategy Review Team had
14 previously approved Project GREENDOT and Project
15 AIRBUS; isn't that true?

16 MS. McGARRY: Objection.

17 A. I -- I -- I simply don't know.

18 MS. McGARRY: Can I get these out of
19 Mr. Wilson's way or will you be going back to them?

20 MS. WIVELL: That's fine.

21 MS. McGARRY: There's a lot of paper in
22 front of him. Okay.

23 Excuse me.

24 (Plaintiffs' Exhibit 635 was marked
25 for identification.)

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1 BY MS. WIVELL:

2 Q. Sir, showing you what's been marked as
3 Plaintiffs' Exhibit 635, this is a memo that begins
4 with the Bates number 650900469; right?

5 A. Correct.

6 Q. I would like the record to reflect this document
7 was previously marked, but I made a mistake and wrote
8 down the wrong exhibit number and so I don't have the
9 correct exhibit number for the previously marked
10 exhibit, but it has previously been marked in this
11 litigation.

12 Sir, this memo concerns a meeting held on the
13 4th and 5th of January 1988 at the JFK Hilton in New
14 York City; correct?

15 A. Can I just check that this document isn't in
16 fact marked -- it appears to be marked "DRAFT" or
17 something like that in the top right-hand corner.

18 Q. I think it says "SECRET," doesn't it, sir?

19 A. Does it? Okay. I -- I can't tell from the copy
20 that's been provided. It's --

21 MS. McGARRY: It's -- it's very difficult
22 to read the stamp.

23 Q. Sir, let me repeat my question.

24 This meeting concerns -- I'm sorry, strike
25 that.

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1 This memo concerns a meeting held on the 4th and
2 5th of January of 1988 at the JFK Hilton in New York
3 City; correct?

4 MS. McGARRY: I object. It's irrelevant to
5 the scope of the deposition.

6 A. It appears from its face to be notes of a
7 meeting so held.

8 Q. All right. I'm going to be referring to -- or
9 I'm going to be asking questions about the first
10 page, so would you take a moment and read it,
11 please.

12 (Witness reviews Plaintiffs' Exhibit 635.)

13 A. I'm going to read the whole document. I'm not
14 going to answer questions on the first page out of
15 context.

16 Q. Fine, go ahead.

17 MS. McGARRY: And I'm going to make an
18 objection to your asking any questions of Mr. Wilson
19 of this document. It's a Brown & Williamson document
20 about a meeting that, as far as I know, no one from
21 B.A.T. Industries attended, and I don't think it's
22 anything that Mr. Wilson has knowledge of and I don't
23 think it's anything that's related to jurisdiction,
24 so it's beyond the scope of the deposition.

25 MS. WIVELL: I disagree.

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1 (Witness continues reviewing Plaintiffs'
2 Exhibit 635.)

3 BY MS. WIVELL:

4 Q. Sir, you've now taken the time to read the
5 entire Exhibit 635; right?

6 A. I have.

7 Q. The document concerns a meeting that was held in
8 New York to discuss Projects GREENDOT and AIRBUS;
9 right?

10 MS. McGARRY: Objection. The document
11 speaks for itself. You may answer.

12 A. The document appears to concern a meeting held
13 in New York on the 4th and 5th of January 1988
14 between representatives of Brown & Williamson, B.A.T.
15 Cigarettenfabriken, Imperial Tobacco Canada, BATUKE
16 and BATCO, all of which are companies which
17 manufacture and market tobacco products, and I don't
18 see any representative from B.A.T. Industries.

19 Q. I'm sorry, sir. Did you hear me ask whether
20 there was a representative from B.A.T. Industries?

21 MS. McGARRY: I'm going to direct the
22 witness not to answer that question on the grounds
23 that it's argumentative.

24 MS. WIVELL: Well I'm going to move to
25 strike the answer as completely inappropriate and

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1 nonresponsive.

2 BY MS. WIVELL:

3 Q. Sir, the meet -- purpose of the meeting was to
4 discuss the progress on two research proposals;
5 right?

6 MS. McGARRY: Objection. The document
7 speaks for itself, beyond the knowledge of the
8 witness, irrelevant to jurisdiction, which is the
9 subject of this deposition.

10 A. If I may quote from the document itself, the
11 very first paragraph, "The purpose of the meeting was
12 to progress the research proposals for highly
13 modified cigarette design," brackets, "(Project
14 GREENDOT)," close bracket, "and completely new
15 alternative products," bracket, "(Project AIRBUS),"
16 close bracket, "strongly endorsed by the Research
17 Policy Group Meeting held in Louisville in September
18 1987," and Louisville, I would point out, is the --
19 where the headquarters of Brown & Williamson Tobacco
20 Corporation are and were at that time located.

21 Q. And the proposals for those two research
22 projects had been accepted by the Tobacco Strategy
23 Review Team; isn't that true?

24 MS. McGARRY: Objection, same objections as
25 I raised to the previous question.

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1 A. The second paragraph of the document reads
2 "These proposals had been accepted in principle by
3 the TSRT as appropriate for the development of new
4 products for the 1990's."

5 Q. Now, sir, you have no information that the
6 proposals were not accepted in principle by the
7 Tobacco Strategy Review Team?

8 MS. McGARRY: Same objections.

9 A. I have no knowledge one way or the other.

10 Q. Now, the B.A.T. Industries board approved a
11 group technology review for the tobacco side of the
12 group business; correct?

13 A. Can you just give me the -- the question again,
14 please.

15 Q. Certainly. The B.A.T. Industries board approved
16 a group technology review for the tobacco side of the
17 group's business; isn't that true?

18 A. You -- if you can help me with the date, I -- I
19 don't know.

20 Q. Well since you've become company -- company
21 secretary, the B.A.T. Industries board has approved a
22 group technology review, hasn't it, sir?

23 MS. McGARRY: Objection, assumes facts not
24 in evidence.

25 A. The board of B.A.T. Industries receives a report

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1 on technology in the group of companies that comprise
2 the subsidiaries of B.A.T. Industries. It receives a
3 periodic review.

4 Could you -- I can't remember what your question
5 was actually.

6 Q. It receives a yearly review, doesn't it, sir?

7 A. It, I believe, receives a yearly review.

8 Q. And in fact, it either approves or disapproves
9 that yearly review, doesn't it, sir?

10 MS. McGARRY: Objection.

11 A. I believe, if you consult the minutes of the
12 board, you will see that the board notes the review.
13 It neither approves nor disapproves. It may raise
14 concerns or issues about matters contained within the
15 review, but I don't think the board actually approves
16 or disapproves.

17 Q. Well it makes recommendations based on that
18 review, doesn't it, sir?

19 A. It may make recommendations based on that
20 review.

21 Q. And in fact, since you've been company
22 secretary, the board has made recommendations to the
23 tobacco side of the group business based on its
24 review of the group technology report?

25 A. I think I would have to refresh my memory from

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1 looking at the minutes of the meetings of the board
2 of B.A.T. Industries.

3 (Plaintiffs' Exhibit 636 was marked
4 for identification.)

5 BY MS. WIVELL:

6 Q. Sir, showing you what's been marked as
7 Plaintiffs' Exhibit 636, this is a document that
8 begins with Bates number 482100366; right?

9 A. Correct.

10 Q. The front page is a memo from Hilary Barton to
11 Nick Brookes and showing a copy to Earl Kohnhorst;
12 correct?

13 A. Yes. It is, yes.

14 Q. And the subject is the technology review we've
15 just been talking about; right?

16 A. I don't think you identified any particular
17 technology review when we were speaking.

18 Q. Fair enough. The subject of the memo is a
19 technology -- a -- strike that.

20 The subject of the memo is a group technology
21 review which was discussed and approved at the group
22 board meeting on the 5th September; right?

23 A. In the words of the author of this note, the
24 subject is the "Group Technology Review which was
25 discussed and approved at the Group Board meeting on"

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1 the "5th" of "September," and as I have previously
2 said, I do not know whether the group approved
3 anything specifically or in fact whether, as is more
4 likely in my view, the group noted the technology
5 review.

6 And if in fact they approved anything, I would
7 have to read the document to determine what they were
8 being asked to approve. And you'll appreciate, I'm
9 sure, that given the tens of thousands of documents
10 that come across my desk every year and hundreds of
11 documents that the board of B.A.T. Industries
12 probably reviews every year or considers or notes
13 every year, that I can't possibly be expected here
14 and now to give you an affirmative answer as to
15 whether the board approved recommendations or
16 approved anything in this document. I will need to
17 read the document.

18 Q. All right. This is a -- I'm sorry, strike
19 that.

20 The second page of the document is entitled
21 "SECRET, B.A.T INDUSTRIES, GROUP TECHNOLOGY REVIEW,
22 1995"; right?

23 A. The second page of the exhibit, yes, is so
24 entitled.

25 Q. All right. Now, sir, there are recommendations

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1 set forth at -- on the fourth page of the document;
2 right?

3 A. I'm going to ask, please, to read this page --

4 Q. Fine, that's fine.

5 A. -- before I answer.

6 MS. WIVELL: And I would like to take a
7 break.

8 THE REPORTER: Off the record, please.

9 (Recess taken.)

10 BY MS. WIVELL:

11 Q. Sir, there are recommendations set forth on the
12 fourth page of Exhibit 363 -- I'm sorry, strike
13 that.

14 There are recommendations set forth on the
15 fourth page of Exhibit 636; right?

16 A. Could you just refer me, please, to the Bates --
17 the relevant Bates number of the page you're
18 referring to.

19 Q. Certainly, the page that ends with number 369.
20 Let me rephrase my question.

21 MS. McGARRY: Excuse me.

22 Q. There are recommendations set forth on the
23 fourth page of Exhibit 636; right?

24 A. The document --

25 MS. McGARRY: I'm --

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1 THE WITNESS: Shall we --

2 MS. McGARRY: I'm sorry. Mr. Wilson's
3 using the copy you gave me, not the original, and
4 these seem to have --

5 THE WITNESS: You've got a --

6 MS. McGARRY: -- different Bates numbers,
7 so that's probably what's causing the confusion. Why
8 don't we switch. Mr. Wilson's copy starts with 469.

9 THE WITNESS: I think you've got it -- no,
10 369. You're looking at the wrong exhibit.

11 MS. WIVELL: You're looking at the wrong
12 exhibit.

13 MS. McGARRY: Oh, I'm sorry. I'm on the --
14 no wonder.

15 MS. WIVELL: Let me try again.

16 MS. McGARRY: I apologize. No wonder the
17 numbers didn't match up. Okay.

18 BY MS. WIVELL:

19 Q. There are recommendations set forth on the
20 fourth page of Exhibit 636, aren't there, sir?

21 A. The fourth page of the exhibit refers in fact to
22 a review, "The last review of this type took place in
23 September 1993," and then continues after -- if I may
24 leave out some words, continues "The main
25 recommendations were that." So this appears to me to

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1 be a reference back to recommendations which arose
2 from a review which was carried out in September
3 1993.

4 Q. Well, sir, that's in a different paragraph than
5 the paragraph concerning the main recommendation,
6 isn't it, sir?

7 MS. McGARRY: Objection, document speaks
8 for itself. You may answer.

9 A. The document speaks for itself, and also
10 paragraph 1.4 of the document says "The main
11 recommendations were." It does not say "The main
12 recommendations are." It is definitely -- to me at
13 any rate from reading this document, this is a
14 reference back to recommendations which arose out of
15 the review that took place in September 1993. That's
16 what the document says.

17 Q. And the recommendation that's made there, it
18 refers to the Tobacco Strategy Group sponsoring a
19 detailed review of the opportunities to improve the
20 global management of the group's tobacco business;
21 right?

22 MS. McGARRY: Objection, mischaracterizes
23 the document and the witness's prior testimony. You
24 may answer.

25 A. Could you read back the question, please.

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1 Q. Certainly. And the recommendation that's made
2 there refers to the group -- to -- strike that.

3 And the recommendation that's referred to there
4 is that the Tobacco Strategy Group should sponsor a
5 detailed review of the opportunities to improve the
6 global management of the tobacco business; right?

7 A. One of the recommendations that appears to have
8 come out of the review that took place in 1993 was,
9 as is stated in the document, that "the Tobacco
10 Strategy Group should sponsor a detailed review of
11 the opportunities to improve the global management of
12 the Tobacco business by" -- and it goes on to state
13 by doing a number of things. And one of the other
14 recommendations there is that "the role of the
15 Financial Services Strategy Group should be
16 strengthened to identify the opportunities to add
17 value, to avoid duplication of effort and to speed up
18 developments, by sharing resources."

19 Q. Now the Tobacco Strategy Group had done that
20 review, hadn't they?

21 A. I --

22 MS. McGARRY: Objection.

23 A. I -- I don't know.

24 Q. Well if we turn to the page that ends with Bates
25 number 371, there's reference to Project Battalion,

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1 isn't there, sir?

2 A. There is a reference to Project Battalion.

3 Q. And Project Battalion was a project that was
4 done based on the review that's referred here?

5 A. I think that's, if I may respectfully say, a
6 misrepresentation of what the document says.

7 Q. I'm -- sir, I'm not asking you what the document
8 says. I'm asking you if Project Battalion arose out
9 of the work that was done by the Tobacco Strategy
10 Group that's referred to here.

11 MS. McGARRY: Had you finished your
12 previous answer, Mr. Wilson?

13 THE WITNESS: No, I hadn't.

14 MS. McGARRY: All right. Well complete
15 that. "I think that's, if I may respectfully say, a
16 misrepresentation of what the document says."

17 A. Among the items identified in the 1993 review in
18 respect of which appreciable progress has -- has been
19 made, according to this document, it says that
20 "reports" had been -- "have been developed and
21 presented to the TSG on Group-wide brand and market
22 profitability, for major brands and markets. This
23 work has formed the basis for the management
24 information system which is being developed as part
25 of" -- and I'd emphasize the words "as part of" --

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1 "Project Battalion for the new Tobacco organisation
2 structure."

3 Q. Now Project Battalion was a project that was
4 developed and put into place by B.A.T. Industries,
5 wasn't it, sir?

6 MS. McGARRY: I'm going to object on
7 relevance because it goes beyond the institution of
8 this litigation in time, but I will permit the
9 witness to answer.

10 Do you need the question again?

11 THE WITNESS: Yes, please.

12 MS. McGARRY: "Now Project Battalion was a
13 project that was developed and put into place by
14 B.A.T. Industries, wasn't it, sir?"

15 A. Project Battalion was a -- a project which
16 involved both B.A.T. Industries and representatives
17 from a number of the companies in the group which
18 manufacture and market tobacco products.

19 Q. And the project was put into effect, wasn't it,
20 sir?

21 A. I think I've just testified that Project
22 Battalion -- there was a project called Project
23 Battalion and that it was a project carried out with
24 involvement by people from B.A.T. Industries and from
25 the tobacco operating companies.

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1 Q. And Project Battalion led to the transfer of the
2 responsibility for the management of the worldwide
3 tobacco business to British-American Tobacco Company
4 Holdings as of the 1st of -- of January 1996; right?

5 MS. McGARRY: Objection, assumes facts not
6 in evidence.

7 A. Following on from Project Battalion, a company
8 then known as Staines Investments Limited, which was
9 incorporated in 1932 and was at that time the
10 intermediate parent company of British-American
11 Tobacco Company Limited, BATCO, changed its name to
12 British-American Tobacco Holdings Limited, and its
13 board was reconstituted and the board was vested with
14 certain strategic management responsibilities for the
15 purposes of essentially carrying forward a vision, a
16 strategic vision, which was that the companies in the
17 group that manufacture and market tobacco products
18 should seek to regain the number-one position, a
19 position which had been lost over time to Philip
20 Morris.

21 Q. Just so we're clear, that took place on or about
22 January 1st, 1996; right?

23 A. Yes, that's -- that's fair, yes.

24 Q. Fine. And would it be fair to say that Project
25 Battalion led to this -- I'm not sure how you

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1 described it in your last answer -- strategic

2 management change that occurred in January 1996?

3 A. I think that's a fair characterization, yes.

4 Q. So it would be fair to say, wouldn't it, sir,

5 that what is referred to here in the page that ends

6 with Bates number 371 of Exhibit 636, the reference

7 to the work done in part by the TSG or presented to

8 the TSG formed the basis for that change of

9 management responsibility that we've been talking

10 about that occurred at the first of the year in

11 1996?

12 MS. McGARRY: Objection to the form of the

13 question.

14 A. I have to say that I think you're drawing

15 certain conclusions which certainly on their face

16 don't seem to be the case. The document doesn't --

17 doesn't of itself support it. I -- if I can just

18 refer you back to the wording here -- and it may be

19 that I've misunderstood your -- your question, but

20 what the wording here talks about is it talks about

21 reports having been developed and presented to the

22 TSG, not prepared by the TSG, having been

23 developed -- if I can finish my answer, please,

24 having been developed and presented to the TSG on

25 group-wide brand and market profitability for major

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1 brands and markets and that that work, the work which
2 formed the basis of those reports which had been
3 presented to the TSG and not carried out by the TSG,
4 had formed the basis for certainly a management
5 information system which was at the time this paper
6 was produced -- I think in September 1995 -- being
7 developed as part of Project Battalion for the new
8 tobacco organization structure.

9 It does not necessarily follow from that that
10 this management information system which is being
11 referred to here, for which that work formed the
12 basis, was necessarily the system that came into
13 effect as a result of the implementation of Project
14 Battalion.

15 Q. And I -- I think there may have been some
16 miscommunication because I'm just trying to establish
17 that what's discussed here was part of the process
18 that ended up being implemented the 1st of
19 December -- or the 1st of January of 1996. You would
20 agree with that, wouldn't you, sir?

21 A. That it was one of the matters that was being
22 developed in connection with the process that ended
23 up --

24 Q. Yes.

25 A. -- with Battalion? I think that's a

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1 reasonable --

2 Q. Okay.

3 A. -- conclusion to draw from this.

4 Q. And you would agree, sir, that the B.A.T.

5 Industries board had a leading role in making sure

6 that that process which ended up with -- with the

7 change that we've been discussing on the 1st of

8 December 19 -- or the 1st of January 1996 -- let me

9 rephrase the question.

10 And you would agree, sir, that the B.A.T.

11 Industries board had a leading role in implementing

12 that process which ended up with the change we've

13 been discussing on the 1st of January of 1996?

14 A. The board of B.A.T. Industries was well aware of

15 Project Battalion. Certain members of the board of

16 B.A.T. Industries took a more direct involvement in

17 the project, yeah.

18 Q. All right. And the board of B.A.T. Industries

19 approved the Project Battalion; correct?

20 A. They --

21 MS. McGARRY: Objection to the form. You

22 may answer.

23 A. The -- the -- the board of B.A.T. Industries

24 certainly approved the reconstitution of the board of

25 British-American Tobacco Holdings with effect from

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1 the 1st of January 1996, noted the various
2 appointments that were being made and noted the
3 strategic rationale for -- for that, which -- and if
4 I may actually just continue that answer, which is
5 not at all surprising given that what we are talking
6 about is one-half of the -- the business which is
7 managed by the companies that the group controls.

8 I have previously testified that B.A.T.
9 Industries is a -- an investment company holding
10 investments in a very substantial number of
11 subsidiaries which are now essentially in two
12 business lines, one of which is tobacco and one of
13 which is insurance/financial services, and it's
14 therefore, to my mind, not at all surprising that
15 B.A.T. Industries would be involved in any proposal
16 for a strategic development concerning the -- the
17 proposal to regain the number-one position in terms
18 of the -- you know, the -- in terms of tobacco.

19 Q. Now, sir, you told me that certain members of
20 the board of B.A.T. Industries took a more direct
21 involvement in the project; right?

22 A. Yes.

23 Q. Well who were those board members?

24 A. They would be the members of the Chief
25 Executive's Committee.

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1 Q. And who were they at the time that Battalion was
2 being implemented?

3 A. When you -- when you -- sorry, I don't
4 understand Battalion being implemented.

5 Q. All right. Well let me rephrase it this way:
6 Who were the board members who had direct involvement
7 in the change that took place January 1st, 1996?

8 A. Well I think I've testified previously that
9 the -- the board of B.A.T. Industries was aware and
10 noted the changes that were taking effect on 1st of
11 January 1996.

12 Q. And I'm --

13 You had also said, and I quote, "Certain members
14 of the board of B.A.T. Industries took a more direct
15 involvement in the project," and I'm trying to find
16 out which one of the board members or which ones of
17 the board members you were referring to when you gave
18 me that answer.

19 A. Thank you, you've -- you've clarified your
20 earlier question. If you're talking about the
21 project which led to the changes on the 1st of
22 January 1996, then the directors who had a more close
23 involvement than the rest of the board were the
24 members of the Chief Executive's Committee, who were
25 Martin Broughton, Ulrich Herter and David Allvey.

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1 Q. And what were their involvement in the project?

2 A. Their involvement was that they would
3 periodically receive reports from the project team as
4 to how matters were progressing and the sort of
5 responses that were being received from -- from
6 interviewees. That -- that would be the nature of
7 their involvement.

8 Q. When you refer to "the project team," to what
9 are you referring?

10 MS. McGARRY: Can I just have a continuing
11 objection to this line of questions as irrelevant?

12 MS. WIVELL: Certainly, but con --
13 considering that this all took place -- or not all,
14 but that much of this activity took place in the
15 years preceding the institution of this lawsuit, I
16 think your objection is misplaced.

17 MS. McGARRY: I thought this lawsuit was
18 commenced in 1994, not 1996.

19 MS. WIVELL: That's right.

20 MS. McGARRY: All right. So my only
21 question was can I have a continuing objection or --

22 MS. WIVELL: I said you could, yes.

23 MS. McGARRY: Oh, thank you. Please don't
24 interrupt me again. I'll reread the question for the
25 witness.

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1 MS. WIVELL: Why don't I restate the
2 question for the witness.

3 MS. McGARRY: You can rephrase it if you'd
4 like.

5 BY MS. WIVELL:

6 Q. Who was on the project team?

7 A. I'm afraid I can't give you the names of all the
8 members of the project team, but I can certainly
9 recall some of the names of the members of the
10 project team. I believe I'm right in saying that the
11 project team was headed by Keith Dunt.

12 Q. And to who -- or I'm sorry.

13 By whom was he employed?

14 A. British-American Tobacco Company, BATCO.

15 Q. And representatives of Brown & Williamson were
16 also involved in the project team; correct?

17 A. As members of the project team specifically,
18 I -- I -- I simply cannot recall. I believe a
19 representative of Souza Cruz was a member of the
20 project team, but I can't recall specifically.

21 Q. Wasn't Earl Kohnhorst a member of the team?

22 A. Yes, I believe he was. I can't confirm that
23 definitely. I -- you may -- you may well be right.

24 Q. All right. There were also lawyers from B.A.T.
25 Industries who were involved in that project, weren't

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1 there, sir?

2 MS. McGARRY: Objection, assumes facts not
3 in evidence. You may answer.

4 A. One lawyer who was employed in B.A.T. Industries
5 was a member of the project team, yes, you're right.

6 Q. Who was that?

7 A. Neil Withington.

8 Q. Now, sir, lawyers from B.A.T. Industries have
9 participated in addition to the work on that project
10 with representatives from Brown & Williamson in
11 developing or approving speeches and presentations
12 that were made on the subject of smoking and health;
13 isn't that true?

14 MS. McGARRY: Objection, assumes facts not
15 in evidence.

16 A. I'm sorry, could you read the question back to
17 me, please.

18 Q. Yes. Lawyers from B.A.T. Industries have
19 participated in developing or approving speeches and
20 presentations that have been made on the subject of
21 smoking and health?

22 MS. McGARRY: Same objection.

23 A. Well I do not know the answer to that question,
24 but I -- I do know that it would -- and I'm sure it's
25 the case that -- but I can't think of a -- you know,

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1 a specific example, but I'm -- you know, I'm quite
2 sure that B.A.T. Industries, as the holding company
3 of the -- of the group of companies, would have
4 wanted to make itself aware of the, you know, public
5 positions on smoking and health that the companies
6 were taking. That would be a natural thing for a
7 holding company to want to do.

8 Q. Well, sir, I'm not talking about just making
9 themselves aware. I'm talking about approving the
10 details of presentations or speeches that have been
11 made by group employees on the issues of smoking and
12 health.

13 MS. McGARRY: Do you want to pose a
14 question.

15 Q. That's occurred, hasn't it, sir?

16 MS. McGARRY: Objection, asked and
17 answered.

18 A. Can you repeat the question, please.

19 Q. Yes, sir. In addition to just making themselves
20 aware of what might have been said, isn't it a fact
21 that lawyers from B.A.T. Industries have helped
22 approve the details of presentations or speeches that
23 have been made by group employees on the issue of
24 smoking and health?

25 A. Well I'm not sure whether they have helped --

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1 they have approved the details. They may well have
2 for all I know, and I -- and I don't know
3 specifically. They may well have been consulted on
4 wording, but I can't -- I don't know whether that
5 amounts to approval.

6 I'm not trying to be evasive. I just simply
7 don't really understand what you're getting at.

8 (Plaintiffs' Exhibit 637 was marked
9 for identification.)

10 BY MS. WIVELL:

11 Q. Sir, showing you what's been marked as
12 Plaintiffs' Exhibit 637, this is a document Bates
13 numbered 109841684; right?

14 A. Correct.

15 Q. This is a letter from L. C. F. Blackman, Lionel
16 Blackman, to Robert Sanford; right?

17 A. This appears to be a copy of a letter. It's not
18 signed. I do not know whether it was sent or
19 received.

20 Q. All right. You just don't know that one way or
21 the other, do you, sir?

22 A. I have no knowledge one way or the other.

23 Q. All right. This letter is dated May 19th,
24 1981.

25 A. This document bears the date 19th May 1981.

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1 Q. All right. Why don't you take a moment and read
2 it.

3 A. Thank you.

4 (Witness reviews Plaintiffs' Exhibit 637.)

5 Q. Sir, you've now read the document?

6 A. Yes, I have.

7 Q. Lionel Blackman was at the time that this
8 document is dated the head of research and
9 development for BATCO; correct?

10 A. I don't know whether he was the head of research
11 and development. I believe he was employed in the
12 research and development function at Southampton.

13 Q. And he was actively involved in
14 smoking-and-health issues, wasn't he, sir?

15 A. Well given that, as I say, he was employed in
16 the research and development function, he would have
17 been involved in issues of research relating to
18 tobacco.

19 Q. All right. And --

20 MS. McGARRY: Just answer what you know.

21 You don't have to speculate.

22 MS. WIVELL: I object to your coaching the
23 witness. That was really inappropriate.

24 Q. Now, this document concerns a speech that
25 Mr. Blackman had -- or Dr. Blackman had been giving;

1 correct?

2 A. If I may read from the text, "Herewith at last
3 the re-print of a talk that covers the majority of
4 information that I have been presenting when talking
5 to various BAT Groups worldwide," stop.

6 Q. And it goes on to say "This particular version
7 was approved in detail by Ernie Pepples and Wilson
8 Wyatt when they spent three days at Windsor House
9 with Lawyers and Public Affairs staff from BATCo and
10 Industries"; correct?

11 A. Yes, and the letter does say "This particular
12 version was approved in detail by Ernie Pepples and
13 Wilson Wyatt"

14 Q. Now Ernie --

15 A. Sorry, I hadn't finished my answer. Had been
16 approved in detail by Ernie Pepples and Wilson
17 Wyatt. It does not say that it was approved by
18 lawyers or public affairs staff from BATCO and
19 Industries. It says it was -- the document speaks
20 for itself. It says it was approved in detail by
21 Ernie Pepples and Wilson Wyatt.

22 Q. When they spent three days at Windsor House.
23 Now Windsor House is the headquarters of B.A.T.
24 Industries; right?

25 A. Windsor House is the headquarters building, yes,

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1 of B.A.T. Industries.

2 Q. And it was approved at the time that they spent
3 three days at Windsor House with lawyers and public
4 affairs staff from BATCO and B.A.T. Industries;
5 right?

6 A. It doesn't specifically identify B.A.T.
7 Industries, but it does refer to a company called
8 Industries. But it also doesn't say what the subject
9 matter of the discussions with the lawyers and public
10 affairs staff from BATCO and Industries concerned,
11 and it does not follow from the words there that the
12 subject matter discussed was the reprint of the talk
13 which is referred to in the first sentence of the
14 paragraph.

15 Q. Sir, you don't know one way or the other as you
16 sit here today what that talk was about, do you?

17 A. No, of course I don't.

18 Q. And you have no information to dispute what's
19 written here in this document, do you?

20 A. I think I've just said what's written here in
21 the document, and of course I have no way to dispute
22 what's written in the document. And what the
23 document says is that the reprint was approved by
24 Ernie Pepples and Wilson Wyatt. It does not say that
25 the reprint was approved by the lawyers and public

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1 affairs staff from BATCO and Industries. The
2 document does not say that.

3 Q. It was approved in detail by Ernie Pepples and
4 Wilson Wyatt when they spent three days at Windsor
5 House with lawyers and public affairs staff from
6 BATCO and Industries; right?

7 A. That is what the document says.

8 Q. Now, sir --

9 And as you sit here today, B.A.T. Industries has
10 no information to refute what's written here; right?

11 A. I have no information to dispute what is written
12 in that letter.

13 Q. Now, sir, isn't it a fact that lawyers from
14 B.A.T. Industries met with lawyers from Brown &
15 Williamson in 1984?

16 A. I believe it to be the case that lawyers from
17 B.A. -- or counsel representing B.A.T. Industries
18 have met with counsel for Brown & Williamson to
19 consider issues arising in the U.S. tobacco
20 litigation and to help plan their respective
21 defenses. I believe that to be the case.

22 Q. And you've seen documents to that effect, sir,
23 haven't you?

24 A. I'm not sure that I have seen documents to that
25 effect, but I do recall having given testimony. I

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1 believe I've given testimony to that effect.

2 Q. Where did you give testimony to that effect?

3 A. Possibly in my Interrogatories in this case.

4 Q. Sir, you understand that there was a Group Legal

5 Conference in 1984 to help plan a joint strategy in

6 defense of the litigation that was then pending in

7 the United States?

8 A. I'm a little bit confused because I don't know

9 specifically whether that was a conference to discuss

10 that issue. You may be right. I -- I simply don't

11 know.

12 Q. Well you understand that in 19 -- I'm sorry.

13 You understand that in the early 1980s there was

14 a wave of new tobacco litigation in the United

15 States?

16 A. Yeah, I'm -- I'm not familiar with the time

17 frames on these things, but I have heard the

18 expression "there have been waves of litigation."

19 Q. And in fact, we saw a document in this

20 deposition that referred to the fresh spate of

21 litigation in the United States and was dated 1984;

22 right?

23 A. Indeed we did, yes.

24 Q. All right. And isn't it a fact that as a result

25 of that fresh spate of litigation in the United

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1 States involving Brown & Williamson, that there was a
2 conference that was held that -- at which lawyers
3 from Brown & Williamson and B.A.T. Industries got
4 together and planned the joint defense or the defense
5 of Brown & Williamson in those cases?

6 MS. McGARRY: Objection.

7 A. I'm -- in 1984?

8 Q. Yes, sir.

9 A. I -- I -- I simply don't know.

10 (Plaintiffs' Exhibit 638 was marked
11 for identification.)

12 BY MS. WIVELL:

13 Q. Sir, showing you what's been marked as
14 Plaintiffs' Exhibit 638, this is a document Bates
15 numbered 109870737; right?

16 A. Correct.

17 Q. And this concerns a Group Legal Conference held
18 in 1984?

19 A. It bears the reference "GROUP LEGAL CONFERENCE
20 1984."

21 Q. It's on B.A.T. Industries stationery; right?

22 A. That appears to be the stationery of B.A.T.
23 Industries, yes.

24 Q. And it was sent out by a member of the board,
25 P. J. Ricketts?

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1 A. Yes.

2 Q. Now, sir, it refers to a conference that was
3 held at Chelwood; right?

4 A. I'm going to ask you, please, to let me read
5 this letter --

6 Q. Fine.

7 A. -- before I answer any questions on it.

8 (Witness reviews Plaintiffs' Exhibit 638.)

9 MS. McGARRY: For the record, by letting
10 Mr. Wilson answer questions about this document,
11 B.A.T. Industries is not waiving any privilege it has
12 as to the substance of things actually discussed
13 during the conference, but I'll permit Mr. Wilson to
14 answer questions about what he knows.

15 THE WITNESS: Can I -- I would like to
16 consult with my counsel before I answer any questions
17 on this --

18 MS. WIVELL: All right.

19 THE WITNESS: -- matter.

20 MS. WIVELL: We'll go off the record.

21 THE REPORTER: Off the record, please.

22 (Recess taken.)

23 BY MS. WIVELL:

24 Q. The --

25 Sir, the conference was held at Chelwood, wasn't

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1 it?

2 A. According to this letter, yes.

3 Q. Chelwood is a meeting facility that's owned by
4 B.A.T. Industries?

5 A. Chelwood was a meeting facility which was owned
6 by B.A.T. Industries.

7 Q. All right.

8 A. At that particular time I believe it -- on the
9 5th of -- on the -- in August 1985 I believe it was
10 owned by a company called B.A.T. Winds -- no, it
11 wouldn't. I -- correct that.

12 Yeah, I -- I -- to be honest, I don't know who
13 it was owned by at that particular time, 1984, but it
14 was certainly a -- a facility for meetings and
15 conferences, yes.

16 Q. And B.A.T. Industries used it for a lot of their
17 meetings and conferences, didn't they?

18 A. B.A.T. Industries -- I don't know what the
19 position was in 1984. At that time I can't -- I
20 can't really comment on it.

21 Q. All right. Now, sir, this document refers to
22 several objectives of the conference; right?

23 A. Yes.

24 Q. Now you understand that one of the purposes of
25 this conference was to discuss the litigation that

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1 was ongoing in the United States against Brown &
2 Williamson?

3 A. I don't think the document actually says that.

4 Q. Well I asked if you understood that that was the
5 case.

6 A. No, I have no understanding about the
7 conference. I wasn't there. As I testified before,
8 I joined B.A.T. Industries in 1990, and I've never
9 spoken to anybody, as far as I know, that was at this
10 conference, so I -- I really don't know what was --
11 what was discussed there.

12 Q. And if a decision was made to -- at this
13 conference to -- strike that.

14 And if a decision was made at this conference
15 that documents would not be sent from, for example,
16 BATCO to Brown & Williamson anymore but to a lawyer
17 by the name of Maddox in Louisville, Kentucky, you're
18 just completely unfamiliar with that; is that right,
19 sir?

20 MS. McGARRY: Objection, assumes facts not
21 in evidence.

22 A. Forgive me for saying this, but I think you've
23 raised a sort of double hypothetical there, and I'm
24 really not sure how I can -- how I can answer it.
25 I've said before I wasn't at the meeting. I have no

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1 idea of what took place beyond anything that's
2 specified in the letter.

3 Q. Mr. Wilson, I can assure you it wasn't
4 hypothetical at all. Now --

5 MS. McGARRY: I move to strike comments
6 counsel -- of counsel. They're irrelevant and they
7 in fact are incorrect.

8 Q. Now, sir, isn't it a fact that the board of
9 B.A.T. Industries P.L.C. has been informed in detail
10 about the American tobacco litigation?

11 A. We're talking now about the -- the current
12 litigation that's -- that's currently continuing?

13 Q. Yes, sir.

14 A. In my time as secretary of B.A.T. Industries,
15 the board has received regular reports from the
16 general counsel about the status of litigation to
17 which the company is a party, yes.

18 Q. And by "general counsel," to whom are you
19 referring?

20 A. I'm referring to the person who has the title
21 the solicitor, Stuart Chalfen.

22 Q. Well, sir, isn't it a fact that the board of
23 B.A.T. Industries has also heard from other American
24 lawyers briefing them on the details of the American
25 tobacco litigation?

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1 A. Well I don't think that would be at all
2 surprising given that the -- B.A.T. Industries is
3 represented in this litigation by American counsel.

4 Q. But the fact is they have received briefings,
5 haven't they?

6 A. Yes, they have received at least one briefing.

7 Q. By a number of different American lawyers;
8 right?

9 A. A presentation has been made to the board by a
10 number of different American lawyers, yes.

11 (Plaintiffs' Exhibit 639 was marked
12 for identification.)

13 BY MS. WIVELL:

14 Q. Sir, showing you what's been marked as 639, this
15 is an outline of a presentation made to the B.A.T.
16 Industries board on July 25th, 1994; correct?

17 MS. McGARRY: Objection.

18 A. It is headed "Presentation to B.A.T Industries
19 p.l.c. Board Members, July 25, 1994."

20 Q. And the Bates number of this document is
21 500022558.

22 A. That is correct.

23 Q. Sir, were you present for this presentation?

24 A. I certainly recollect being present at a
25 presentation at which these -- I believe some -- at

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1 least some of these matters were addressed, and it
2 was possibly this meeting. I -- I simply can't
3 recall specifically, but I was certainly present at a
4 meeting at which the names -- some of the names of
5 the people here were -- were present, yes.

6 Q. Now I see that the last issue concerns
7 communications issues and responses; right?

8 A. That is the heading on the piece of paper, yes.

9 Q. And there is a name behind it. What does that
10 name mean?

11 A. You're referring to the word -- the word in
12 the -- in the box, in the brackets?

13 Q. Yes, sir.

14 A. That is the name of an individual employed in
15 B.A.T. Industries.

16 Q. All right. Who is that?

17 A. Michael Prideaux.

18 Q. And what is his role at B.A.T. Industries?

19 A. He is director of public affairs.

20 Q. He is not a lawyer; correct?

21 A. He is not a lawyer.

22 Q. All right. What subjects were discussed with
23 the board concerning communications and issues --
24 issues and responses by Mr. Prideaux at that
25 meeting?

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1 MS. McGARRY: I'm going to caution the
2 witness just to answer exactly the question asked,
3 the -- the subjects, and before we go any further,
4 we'll have to determine whether we're getting into
5 privileged areas.

6 A. I -- this meeting is over three years ago. I
7 simply can't remember. I -- I simply cannot remember
8 what issues and responses -- what communications
9 issues and responses were discussed. I don't even
10 know if any communications issues and responses were
11 actually discussed. I mean, looking at this
12 document, it seems to me to some degree to be
13 potentially a draft, but I -- I simply can't -- I
14 can't tell you.

15 I just don't have any specific recollection at
16 this time or even general recollection of what was
17 discussed in relation to, you know, that particular
18 matter.

19 Q. Well there are names behind other of the
20 presentations. Do you understand that Griffin Bell
21 made a presentation on the current political scene in
22 the U.S. to the board?

23 A. I remember that Judge Griffin Bell attended a
24 meeting at which I was present, and I think I've
25 previously said it could have been a meeting on the

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1 25th of July. I don't know whether he made a
2 presentation on the current political scene in the
3 U.S. I don't even recall whether he actually made a
4 presentation at all, but I do recall him having been
5 there.

6 Q. You have no recollection about what he said?

7 MS. McGARRY: Asked and answered.

8 A. I think I've previously told you this meeting,
9 if it did take place on 25th of July 1994, was over
10 three years ago. I as part of my regular business
11 activities take part in numerous meetings. I can't
12 possibly remember the detail or -- and not
13 necessarily even the general thrust of every meeting
14 at which I've been -- I've been present. I simply
15 can't tell you.

16 Q. Do you remember a Mr. Prideaux making a
17 presentation to a board meeting on the subject of --
18 of litigation communications issues and responses?

19 A. Mr. Prideaux?

20 Q. Yes.

21 A. I don't have a specific recollection of whether
22 he did or didn't. I simply don't know.

23 Q. Now, sir, the B.A.T. Industries board was also
24 involved in the settlement talks that have gone on
25 this summer in the American tobacco litigation,

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1 haven't they?

2 MS. McGARRY: I'm going to object. I think
3 it's improper to get anything relevant to the
4 settlement. It's certainly irrelevant to
5 jurisdiction and it's irrelevant to the litigation.
6 I don't think it's a proper area of inquiry, but I
7 will permit the witness to answer that question "yes"
8 or "no."

9 THE WITNESS: Could you read the question
10 back for me, please.

11 MS. McGARRY: It said "Now, sir" --

12 MS. WIVELL: Let me rephrase it.

13 MS. McGARRY: Okay.

14 BY MS. WIVELL:

15 Q. Members of the B.A.T. board were involved in
16 settlement talks that have gone on this summer in the
17 American tobacco litigation?

18 A. Could you clarify "involved" for me, please.

19 Q. Participated in.

20 A. Well can I ask for further clarification. Talks
21 with whom?

22 Q. With people from the plaintiffs' side.

23 A. With representatives of the plaintiffs?

24 Q. Yes.

25 A. So the question is members of the board of

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1 B.A.T. Industries took part in conversations with the
2 representatives of the plaintiffs in connection with
3 the settlement proposal; is that --

4 Q. Well that's a good question. Why don't you
5 answer that question.

6 A. I -- I don't know that that's the case.

7 Q. All right. But Martin Broughton did participate
8 in settlement discussions concerning the American
9 tobacco litigation which took place this summer;
10 right?

11 MS. McGARRY: I object. The question is
12 vague. You haven't specified with whom, and again
13 it's just improper.

14 A. I believe Martin Broughton took part in
15 discussions concerning the settlement, but precisely
16 with whom, I -- I believe he --

17 MS. McGARRY: I'm sorry, I should have
18 cautioned you just to answer that question "yes" or
19 "no."

20 MS. WIVELL: Well I object to your coaching
21 the witness and interrupting him.

22 Q. Sir, Martin Broughton came to the United States
23 to participate in discussions concerning the
24 settlement negotiations in the tobacco litigation
25 this summer, didn't he?

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1 MS. McGARRY: That's "yes" or "no."

2 MS. WIVELL: Counsel, I really object to
3 your coaching this witness.

4 A. I believe he did.

5 Q. All right. And he came here and he took part in
6 discussions with other representatives from the
7 defendants in the American tobacco litigation, didn't
8 he?

9 MS. McGARRY: I'm going to instruct the
10 witness not to answer. The settlement is completely
11 irrelevant to the subject matter --

12 MS. WIVELL: I'm going to --

13 MS. McGARRY: -- of the deposition and it
14 is a totally improper area of inquiry.

15 MS. WIVELL: I'm going to tie it up to --

16 MS. McGARRY: It would certainly not be
17 admissible --

18 MS. WIVELL: Excuse me, Counsel, quit
19 interrupting me.

20 MS. McGARRY: You interrupted me,
21 Ms. Wivell.

22 MS. WIVELL: No, ma'am, I did not.

23 MS. McGARRY: I'm sure you're familiar with
24 the case law that says jurisdiction is determined at
25 the time the complaint is filed. You're asking about

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1 events that may or may not have occurred over three
2 years later. Just on the grounds of timing, it's
3 completely irrelevant.

4 MS. WIVELL: And I'm going --

5 MS. McGARRY: We have a March 1994
6 discovery cutoff in this case. Talks about
7 settlement are completely inadmissible under
8 Minnesota law, as you know, and they are not a proper
9 subject of inquiry.

10 I'm directing the witness not to answer any more
11 of your questions on this subject.

12 BY MS. WIVELL:

13 Q. Sir, are you going to not answer my question?

14 MS. McGARRY: Yeah, he's going to abide by
15 his counsel's instruction.

16 MS. WIVELL: All right.

17 Q. Sir, isn't it a fact that one of the conditions
18 of the American tobacco settlement was that Brown &
19 Williamson drop its lawsuit against Jeffrey Wigand?

20 MS. McGARRY: I direct the witness not to
21 answer.

22 Q. Sir, isn't it a fact that in order to drop its
23 lawsuit against Jeffrey Wigand, Brown & Williamson
24 had to get approval from Martin Broughton?

25 MS. McGARRY: I direct the witness not to

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1 answer.

2 MS. WIVELL: On what grounds, Counsel?

3 MS. McGARRY: The ones I previously
4 expressed.

5 MS. WIVELL: Oh, I haven't heard you
6 instruct him on privilege grounds. Is that right?

7 MS. McGARRY: I expressed my reasons I will
8 not permit the witness to answer any questions on
9 this. If you'd like to use up the remainder of your
10 time asking questions that you know he will be
11 instructed not to answer, you may do so.

12 BY MS. WIVELL:

13 Q. Sir, isn't it a fact that it's been reported in
14 the American press that Martin Broughton had to give
15 his permission before Brown & Williamson could drop
16 its suit against Jeffrey Wigand?

17 MS. McGARRY: I repeat my instructions.

18 Q. Sir, did --

19 MS. McGARRY: And further, what's reported
20 in the --

21 MS. WIVELL: Excuse me, Counsel, could
22 you --

23 MS. McGARRY: -- American press is
24 completely irrelevant. I hadn't finished my
25 objection, Martha.

1 MS. WIVELL: Oh, I'm sorry, Counsel. When
2 you stop and you breathe and you -- and I begin a
3 question and get halfway through it, I guess I -- I
4 assumed you were done.

5 MS. McGARRY: Well you made an erroneous
6 assumption. I think that what is reported in the
7 American press is irrelevant to whether or not the
8 court in -- court in Minnesota has jurisdiction --

9 MS. WIVELL: Fine, just say, "Objection."

10 MS. McGARRY: -- over B.A.T. Industries.

11 BY MS. WIVELL:

12 Q. Sir, did B.A.T. Industries ever sue Jeffrey
13 Wigand?

14 A. Not to my knowledge.

15 Q. Did BATCO ever sue Jeffrey Wigand?

16 MS. McGARRY: This is irrelevant to
17 jurisdiction. It's beyond the scope. You clearly
18 finished everything that you think you can
19 legitimately ask about and now we're just --

20 MS. WIVELL: Excuse me.

21 MS. McGARRY: -- wasting time, and I'm
22 directing the witness not to answer.

23 MS. WIVELL: On -- on what grounds,
24 Counsel?

25 MS. McGARRY: The ones I previously gave.

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1 MS. WIVELL: Which are what? I just want
2 to make sure we have a complete record here.

3 MS. McGARRY: I can't quite understand,
4 Martha. If I give a long objection, you complain;
5 and if I give a short objection, you complain.

6 MS. WIVELL: I just want to make sure we
7 have a complete record.

8 MS. McGARRY: Okay. If I may go without
9 interruption, I'll tell you when I'm done.

10 As I stated previously, the case law is clear
11 that jurisdiction is determined at the time that a
12 complaint is filed. If you would like to ask
13 Mr. Wilson if he knows whether BATCO, who he is not
14 employed by, is not the subject of this deposition,
15 sued Mr. Wigand prior to March of 1994, you may ask
16 that question.

17 I think you are wasting all of our time here.
18 You're trying to go into the settlement. I said I
19 would tell you when I'm finished, Martha, so you
20 don't have any confusion this time.

21 If you're trying to get into the settlement,
22 that is also irrelevant. It is not admissible. It
23 is an improper subject of inquiry and is completely
24 unrelated to the subject matter of this deposition,
25 which is whether the court in Minnesota has personal

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1 jurisdiction over B.A.T. Industries and had such
2 jurisdiction in March of 1994.

3 If you'd like to limit your question to whether
4 BATCO sued Jeffrey Wigand before March of 1994,
5 whether Mr. Wilson has personal knowledge of that, I
6 will permit the witness to answer that question.

7 MS. WIVELL: All right. For the record --

8 MS. McGARRY: I'm finished.

9 MS. WIVELL: Oh. For the record, my
10 questions are designed to show control over Brown &
11 Williamson. I believe that I can do that with
12 evidence that goes on today, Counsel. I haven't
13 heard you assert privilege. I believe that the only
14 way in this litigation that you can instruct a
15 witness not to answer, according to the court orders,
16 are on the basis of privilege.

17 I don't -- haven't heard a privilege objection
18 and I don't believe you're correct in instructing the
19 witness not to answer, and we will be reviewing the
20 transcript along with the -- and this, along with the
21 failure to provide a witness who is knowledgeable on
22 subjects relating to jurisdiction on questions I've
23 asked, may or may not be brought to the attention of
24 the court. I believe the issue of whether Brown &
25 Williamson could drop a suit on its own as part of

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1 the settlement goes to the issue of control, and
2 frankly that's the answer to the question I want, did
3 B.A.T. Industries have to approve Brown &
4 Williamson's dropping the suit against Jeffrey Wigand
5 as part of the settlement negotiations, "yes" or
6 "no."

7 That's the question I would like to have the
8 answer to and that's where I'm going to tie this all
9 together, so let me pose that question --

10 MS. McGARRY: You already posed it. I've
11 already instructed --

12 MS. WIVELL: I'll pose it again.

13 MS. McGARRY: -- the witness not to answer
14 it, and he's not --

15 MS. WIVELL: Excuse me.

16 MS. McGARRY: -- going to answer it this
17 time.

18 MS. WIVELL: Counsel, could you let me
19 finish. You just -- you've been -- every time I
20 start, you interrupt, so I would really appreciate
21 the opportunity to pose the question. Then you can
22 instruct him not to answer, and then we can move on.

23 BY MS. WIVELL:

24 Q. Sir, was it necessary for Brown & Williamson to
25 obtain the permission of anyone at B.A.T. Industries

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1 before they could agree to drop their lawsuit against
2 Jeffrey Wigand as part of the settlement of the
3 American tobacco litigation that went on this
4 summer?

5 MS. McGARRY: I will permit you to answer
6 "yes" or "no" whether it was necessary.

7 A. I believe it was not necessary.

8 Q. Was the permission of B.A.T. Industries obtained
9 by Brown & Williamson before it agreed to drop its
10 lawsuit against Jeffrey Wigand as one of the
11 conditions of the American tobacco settlement that
12 occurred this summer?

13 MS. McGARRY: I instruct the witness not to
14 answer.

15 MS. WIVELL: So the very fact of -- you're
16 instructing him not to answer on the very fact of
17 whether the -- the permission was obtained?

18 MS. McGARRY: That's correct.

19 MS. WIVELL: On what grounds, Counsel?

20 MS. McGARRY: The ones I already outlined.
21 We're not going into the settlement, Martha. You
22 said you had one question, whether it was necessary.
23 I permitted him to answer that. Now you're going
24 further.

25 MS. WIVELL: That's right.

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1 MS. McGARRY: I shouldn't have even asked
2 him -- let him answer that. We're not going into the
3 settlement. Any question related to the settlement
4 whatsoever the witness will be instructed not to
5 answer.

6 MS. WIVELL: All right. Then let me phrase
7 this question.

8 BY MS. WIVELL:

9 Q. Did anyone from Brown -- representing Brown &
10 Williamson obtain Martin Broughton's permission to
11 drop the lawsuit against Jeffrey Wigand --

12 MS. McGARRY: Instruct the witness not
13 to --

14 Q. -- before --

15 MS. WIVELL: Excuse me. May I finish,
16 Counsel.

17 MS. McGARRY: I didn't realize you weren't
18 finished.

19 Q. Did anyone representing Brown & Williamson
20 obtain Martin Broughton's permission to drop the
21 lawsuit against Jeffrey Wigand before it agreed to do
22 so as part of the conditions of the American tobacco
23 settlement this summer?

24 MS. McGARRY: I instruct the witness not to
25 answer.

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1 MS. WIVELL: All right. Would you please
2 state the grounds. I just want to make sure that we
3 have them clearly in the record.

4 MS. McGARRY: The same grounds I stated the
5 last four times you asked the question.

6 MS. WIVELL: And you are not instructing
7 him to answer on the grounds of privilege?

8 MS. McGARRY: I explained what my position
9 was.

10 MS. WIVELL: So you are not; correct,
11 Counsel?

12 MS. McGARRY: I'm not the witness,
13 Ms. Wivell.

14 MS. WIVELL: I'm sorry, now you refuse to
15 tell me.

16 MS. McGARRY: I'm not wasting time. We've
17 gone over it and over it. The first three times you
18 asked the question, I explained the reasons why I
19 instructed the witness not to answer.

20 MS. WIVELL: I just want to make the record
21 clear.

22 MS. McGARRY: We must be getting near the
23 end here since we're getting into totally irrelevant
24 matters.

25 BY MS. WIVELL:

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1 Q. Now, sir, in 1990 B.A.T. Industries changed the
2 reporting relationship between it and Brown &
3 Williamson; right?

4 A. In 1990?

5 Q. Yes, sir.

6 A. I -- no, I think that's incorrect.

7 Q. Well isn't it a fact that as of the 1st of April
8 1990, B.A.T. Industries announced that the management
9 of Brown & Williamson would report directly to B.A.T.
10 Industries?

11 A. Oh, I see. You're -- yes, thank you for --
12 you've -- you've corrected my recollection. I
13 assumed you were talking about the interposition of
14 BATUS Holdings as the new holding company of Brown &
15 Williamson in the '70s.

16 Q. Well just so the record's clear, there was a
17 period of time when Brown & Williamson reported
18 through BATUS to B.A.T. Industries; correct?

19 A. Yes, there was.

20 Q. And then in 1990 B.A.T. Industries removed BATUS
21 as part of the reporting line; right?

22 A. I don't know that --

23 MS. McGARRY: Objection, assumes facts not
24 in evidence. You may answer.

25 A. I don't know that it actually removed BATUS as

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1 part of the reporting line as such.

2 Q. Well you would agree that as of April 1st, 1990,
3 B.A.T. Industries determined that the management of
4 Brown & Williamson would report directly to it?

5 MS. McGARRY: Objection to the form.

6 A. I'm sorry. Can you -- can you repeat the
7 question, please.

8 Q. Certainly. You would agree that as of
9 April 1st, 1990, B.A.T. Industries determined that
10 the management of Brown & Williams -- Brown &
11 Williamson would report directly to B.A.T.
12 Industries?

13 A. I would I think accept that from 1990 the chief
14 executive officer of Brown & Williamson would
15 henceforth report directly to B.A.T. Industries.

16 MS. WIVELL: Mr. LaBorde, could you show
17 the witness Exhibit 287.

18 (Plaintiffs' Exhibit 287 was handed
19 to the witness.)

20 BY MS. WIVELL:

21 Q. Sir, showing you what's previously been marked
22 as Exhibit 287, this is a document Bates numbered
23 400364232 as its beginning Bates number; right?

24 A. Yes, it is, yes.

25 Q. This is a press release from B.A.T. Industries

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1 dated January 24th, 1990?

2 A. It appears to be, yes.

3 Q. And it concerns the -- in part the change of
4 reporting relationship between B.A.T. Industries and
5 Brown & Williamson?

6 A. I think it would be helpful if I could just have
7 a minute to -- quickly to read this --

8 Q. That's fine.

9 A. -- this document. Thank you.

10 (Witness reviews Plaintiffs' Exhibit 287.)

11 MS. WIVELL: Can we go off the record for a
12 second.

13 THE REPORTER: Off the record, please.

14 (Discussion off the record.)

15 BY MS. WIVELL:

16 Q. Sir, you've now reviewed 287.

17 A. Yes, I have.

18 Q. This press release announces that effective
19 April 1st, 1990 the management of Brown & Williamson
20 would report directly to B.A.T. Industries?

21 A. This says that "... the managements of Brown &
22 Williamson Tobacco and B.A.T Cigarettenfabriken GmbH
23 (BATCF) will report directly to B.A.T
24 Industries"

25 And I'm going to take the opportunity at this

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1 stage to explain the rationale and purpose behind
2 this, which is as follows: In 1989 B.A.T. Industries
3 P.L.C. received -- or the shareholders of B.A.T.
4 Industries P.L.C., its public stockholders, received
5 an offer from the board of a company called Hoylake
6 Investments to sell their shares to Hoylake. In
7 other words, it was a takeover offer for the
8 company. The takeover offer lasted some, I think, 10
9 or 11 months. It went on from about July 1989 and
10 the offer wasn't finally abandoned until about the
11 middle of 1990, and this statement was put out during
12 the course of the takeover period.

13 As part of the company's defense to the
14 takeover, the board proposed and the shareholders --
15 the public stockholders of the board approved various
16 strategic changes in the composition and the
17 business -- businesses of the subsidiaries which the
18 company owned, and essentially what was agreed was
19 that the company should henceforth concentrate its
20 activities on tobacco -- or the company's business,
21 the business lines in which the company invested,
22 should be restricted to essentially tobacco and
23 financial services and that the group, which at that
24 time was also heavily engaged in retail activities,
25 paper activities and I think some other activities,

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1 would divest itself of those investments.

2 And in the United States -- and I think I may
3 have mentioned this earlier -- the parent company of
4 Brown & Williamson was a company called BATUS, BATUS
5 Holdings, and BATUS had a number of subsidiaries, one
6 of which was Brown & Williamson and others of which
7 were Appleton Papers; Saks, Saks Fifth Avenue I think
8 it's well known as here; Marshall Field's; and I
9 think some others as well. And as part of the
10 strategy for divestment, which I've previously
11 mentioned, BATUS was going to divest itself of those
12 other interests, which resulted in the only operating
13 company BATUS owning being Brown & Williamson.

14 And that I think is the justification -- or the
15 rationale for why -- since BATUS had no other
16 companies which were carrying on operations, why it
17 no longer made sense for B&W to continue to report or
18 the chief executive of B&W to continue to report to
19 B.A.T. Industries through the intermediate holding
20 company BATUS.

21 Q. Move to strike as nonresponsive.

22 Sir, my question was simply this press release
23 announces that effective April 1st, 1990 the
24 management of Brown & Williamson would report
25 directly to B.A.T. Industries; right?

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1 A. I think that's the first part of the answer I
2 previously gave.

3 Q. Now, sir, even before Brown & Williamson
4 reported directly to the B.A.T. board, members of the
5 B.A.T. board were involved in and interactive with
6 Brown & Williamson; correct?

7 MS. McGARRY: Objection, vague. You may
8 answer.

9 A. I -- I -- I don't understand the question. I'm
10 sorry, could you -- could you clarify.

11 Q. All right. Well, for example, even before 1990
12 Brown & Williamson was required to -- to provide
13 monthly reports to B.A.T. Industries; isn't that
14 true?

15 A. I do not know whether it was required to produce
16 monthly reports or not required. I -- I simply don't
17 know. I -- I make the point again that I wasn't
18 actually employed in B.A.T. Industries before October
19 of 1990, so I have no personal knowledge of this.

20 Q. Well, sir, you understand you're here today as
21 the spokesperson for B.A.T. Industries; right?

22 MS. McGARRY: Objection, asked and answered
23 four or five times. You may answer it again.

24 A. I understand what you've just said to me.

25 Q. All right. Sir, isn't it a fact that Brown &

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1 Williamson was required to provide management reports
2 even before 1990 to B.A.T. Industries?

3 MS. McGARRY: Objection. The witness
4 already stated he doesn't know.

5 A. I do not know whether they were required or not
6 required, whether they provided management reports or
7 didn't provide management reports.

8 (Plaintiffs' Exhibit 640 was marked
9 for identification.)

10 BY MS. WIVELL:

11 Q. Sir, showing you what's been marked as
12 Plaintiffs' Exhibit 640, this is a document Bates
13 numbered 674107764; correct?

14 A. I'm -- I'm sorry, I'm -- I can't -- oh, sorry,
15 could you just read the -- the number back to me,
16 please.

17 Q. Certainly. 674107764.

18 A. Yes, it bears that Bates number.

19 MS. McGARRY: Can I ask whether this is on
20 the predesignation list? It doesn't --

21 MR. LEWIS: It is.

22 MS. McGARRY: Okay. Thanks. It just
23 didn't look familiar. Thank you.

24 BY MS. WIVELL:

25 Q. Now, sir, this is a management report from

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1 Brown & Williamson for the month of March 1985;

2 correct?

3 A. The -- the -- the document states "Dear Gerald:

4 Enclosed is a Management Report for the month of

5 March 1985."

6 Q. And it provides various different kinds of

7 information from Brown & Williamson to B&W -- or I'm

8 sorry, strike that.

9 And this document provides different kinds of

10 information from Brown & Williamson to -- directly to

11 B.A.T. Industries, doesn't it, sir?

12 A. It -- it states "Information is provided as

13 follows" and then specifies some information, and the

14 document is addressed to Mr. Gerald -- Gerald Dennis

15 at B.A.T. Industries.

16 Q. Now, sir, monthly reports like this were made by

17 Brown & Williamson directly to -- strike that.

18 Brown & Williamson was required to make monthly

19 reports like this one directly to B.A.T. Industries,

20 wasn't it, sir?

21 MS. McGARRY: Objection, asked and

22 answered.

23 A. I have no knowledge whether Brown & Williamson

24 was required to make reports, whether it voluntarily

25 produced these reports for its own reasons, or I

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1 simply don't know the answer to this.

2 MS. WIVELL: Because this matter concerns
3 the control of Brown & Williamson and -- and would be
4 a subject of the jurisdiction deposition, I would
5 request that I have a witness who is knowledgeable
6 about this subject so that I can ask questions of
7 that witness at this deposition and who can answer
8 them. Are you going to provide me such a witness,
9 Counsel?

10 MS. McGARRY: I'll consider whether we'll
11 try to get the answer to this question for you.

12 MS. WIVELL: When will I know since we're
13 now some six or more hours into this deposition?

14 MS. McGARRY: Today.

15 BY MS. WIVELL:

16 Q. Sir, can you answer any questions for me about
17 the amount of control that B.A.T. Industries
18 exercised over Brown & Williamson in the period
19 before 1990?

20 MS. McGARRY: Object that it assumes facts
21 not in evidence, but I'll permit the witness to
22 answer the question.

23 A. That really must depend on the questions you ask
24 me. I -- I simply don't know.

25 Q. Do you have any information as you sit here

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1 today on the amount of control that B.A.T. Industries
2 exercised over Brown & Williamson prior to 1990?

3 MS. McGARRY: Same objection.

4 A. I'm not really sure what you mean by "control."

5 Q. Well, for example, things that B.A.T. Industries
6 required Brown & Williamson to do.

7 A. I don't know what B.A.T. Industries required
8 Brown & Williamson to do and what Brown & Williamson
9 did for themselves. It doesn't follow incidentally
10 from this document, which is a copy of a monthly
11 report, a monthly -- a management report, I should
12 say, for the month of March 1985, that Brown &
13 Williamson was either in the habit or was instructed
14 or was required to produce management reports to
15 B.A.T. Industries. It's possible that Mr. Gerald
16 Dennis at B.A.T. Industries was interested in having
17 a snapshot of what the position was in the United
18 States at that time and, I mean, this document was
19 produced in response, but beyond that I -- I can't
20 say.

21 Q. You can't tell me whether monthly reports were
22 required to be sent to B.A.T. Industries, can you?

23 A. I can tell you neither whether monthly reports
24 were required to be sent or whether they were sent by
25 Brown & Williamson of their own volition. I simply

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1 do not know.

2 Q. Would it be fair to say that you do not know the
3 kinds of matters that might have been required by
4 B.A.T. Industries concerning the day-to-day
5 management of the company before 19 -- of Brown &
6 Williamson before 1990?

7 MS. McGARRY: Object to the form of the
8 question.

9 A. I have previously testified that the group --
10 that B.A.T. Industries confers on the companies in
11 the group which carry out business activities a
12 considerable degree of autonomy -- that has always
13 been the case, to my knowledge, since 1976 -- and
14 that in accordance with the terms of the delegated
15 authority certain matters have to be referred to
16 either the Chief Executive's Committee, previously
17 Chairman's Policy Committee, or to the board of
18 B.A.T. Industries, depending on the significance in
19 terms of financial amounts involved.

20 The general approach of B.A.T. Industries has to
21 con -- has been to confer considerable autonomy on
22 the activities of its operating companies, and this
23 reflects the fact that B.A.T. Industries has never at
24 any time employed more than 185 people, who cannot
25 possibly be -- have been expected -- could not

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1 possibly either have been expected or in reality have
2 performed management functions and carried out
3 management tasks on behalf of a collection of
4 subsidiaries with a wide geographical spread
5 numbering several hundreds and employing between them
6 something in the region of at one particular point in
7 time 270,000 people.

8 Q. Move to strike as nonresponsive. Sir, my --

9 MS. McGARRY: That was very responsive.
10 You just didn't like it.

11 MS. WIVELL: No, it was nonresponsive.

12 Q. Sir, do you know the facts of whether or not
13 B.A.T. Industries board members, for example, were
14 involved in the management of any day-to-day issues
15 with Brown & Williamson?

16 MS. McGARRY: Object to the question as
17 vague, but you may answer.

18 A. Could you clarify, please, for me, the -- the
19 meaning of the words "day-to-day."

20 Q. Well, for example, isn't it a fact that Patrick
21 Sheehy visited Brown & Williamson in 1979 and
22 discussed details of Kool advertising with the
23 management of Brown & Williamson and that he did so
24 in his capacity as a board member of B.A.T.
25 Industries?

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1 MS. McGARRY: Objection, assumes facts not
2 in evidence.

3 A. I have absolutely no knowledge of that.

4 Q. And that's my point. As you sit here today, you
5 don't really have any knowledge, sir, do you, of the
6 interactions between B.A.T. Industries and Brown &
7 Williamson on issues related to management, do you?

8 MS. McGARRY: I object to the questioner
9 raising her voice and being argumentative.

10 MS. WIVELL: The questioner --

11 MS. McGARRY: I object --

12 MS. WIVELL: -- has not raised her voice.
13 That time --

14 MS. McGARRY: May I finish?

15 MS. WIVELL: -- I did because I was
16 interrupted again.

17 MS. McGARRY: May I finish? Was your
18 question finished, or did you have more? I thought
19 you said "do you" at the end.

20 MS. WIVELL: Well I'll rephrase. I'll
21 repeat the question.

22 MS. McGARRY: No, I'm going to object. I
23 think that you have mischaracterized the witness's
24 previous testimony. He has clearly stated he's aware
25 of many of these issues, and he previously testified

1 that Sir Patrick Sheehy was the head of BATCO in
2 1979.

3 MS. WIVELL: Well let's take care of that
4 little detail.

5 BY MS. WIVELL:

6 Q. In 1979 Patrick Sheehy was on the board of
7 B.A.T. Industries, wasn't he, sir?

8 A. In 1979?

9 Q. Yes, sir.

10 A. Yes, he was, yeah.

11 Q. Yeah. And isn't it fair to say that you really
12 don't know the kinds of matters that might have been
13 required by B.A.T. Industries concerning the
14 day-to-day management of Brown & Williamson before
15 1990?

16 MS. McGARRY: Objection, mischaracterizes
17 the witness's prior testimony. You may answer.

18 A. I -- I'm not sure how I can respond in any way
19 that's different from what I've previously said.
20 You're asking the same question over and over again,
21 and I have given you and answered to the best of my
22 ability, and I cannot add anything more.

23 Save that, the number of facts, as you've called
24 them, which are relevant to the operation of any
25 company on any particular day in any particular year

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1 must be thousands and thousands and thousands, and if
2 it's possible for one human being to be aware of
3 every single fact that ever affected any
4 organization, I'd be very surprised to meet such a
5 person.

6 Q. Move to strike as nonresponsive.

7 Sir, are you aware of the kinds of matters that
8 were required by B.A.T. Industries concerning the
9 day-to-day management of Brown & Williamson before
10 1990?

11 MS. McGARRY: Objection, contrary to the
12 witness's prior testimony.

13 A. I -- I've given you an answer to this. I do not
14 know what more I can add to what I have previously
15 said.

16 Q. You don't know any of the facts, sir, do you?

17 A. I think --

18 Q. If I --

19 MS. McGARRY: That's a complete question?

20 MS. WIVELL: Yeah, that's a complete
21 question.

22 MS. McGARRY: The question is does he know
23 any of the facts?

24 MS. WIVELL: I'll withdraw the question.

25 MS. McGARRY: Okay.

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1 BY MS. WIVELL:

2 Q. Sir, I could sit here and ask you questions
3 about the interaction between B.A.T. Industries and
4 Brown & Williamson before 1990, and you don't know
5 those facts so you can't answer those questions; --

6 MS. McGARRY: Objection.

7 Q. -- isn't that true?

8 MS. McGARRY: Objection, calls for the
9 witness to speculate and is contrary to the prior
10 testimony of the witness.

11 A. It must depend on what facts you ask me.

12 Q. All right. Well are you aware of a meeting that
13 took place in 1979 between employees of Brown &
14 Williamson and Sir Patrick Sheehy at which time
15 details concerning Kool strategy for that brand were
16 discussed?

17 A. I'm not aware of that meeting.

18 Q. Are you even aware that Sir Patrick Sheehy went
19 to Brown & Williamson in 1979?

20 A. I think I've previously mentioned to you that I
21 didn't join B.A.T. Industries until 1990, and I'm not
22 aware that Sir Patrick Sheehy went to Brown &
23 Williamson in 1979.

24 Q. So --

25 A. That does not, however -- if I may finish my

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1 answer -- does not, however, prove one way or the
2 other that I do or do not know facts about B.A.T.
3 Industries prior to 1990.

4 Q. Well, sir, let's take a look at this exhibit,
5 see if you know anything about this one.

6 (Plaintiffs' Exhibit 641 was marked
7 for identification.)

8 BY MS. WIVELL:

9 Q. Sir, showing you what's been marked as
10 Plaintiffs' Exhibit 641, this is a document that
11 bears the Bates number 660067096; right?

12 A. That looks right, yes.

13 Q. And it's a memorandum from F. E. McKeown to
14 Willets and Reid regarding Kool brand mapping;
15 right?

16 A. It is from the person you said to the persons
17 you've said and it is headed "SUBJECT: KOOL Brand
18 Mapping."

19 Q. Now the first sentence says "Mr. Sheehy will
20 be ... to see us at some time during September";
21 right?

22 A. It says "Mr. Sheehy will be in to see us at some
23 time during September."

24 Q. Did that meeting take place?

25 A. I do not know.

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1 Q. It goes on to say "Management has requested that
2 we be prepared to discuss with them on a style by
3 style basis the positioning, brand character and
4 mapping of our assigned brands as well as key
5 selected competitors"; right?

6 A. It says "Management has requested that we be
7 prepared to discuss with them on a style by style
8 basis the positioning, brand character and mapping of
9 our assigned brands as well as key selected
10 competitors." Now by looking at the document itself,
11 which appears to be a production from Brown &
12 Williamson, I think -- I'm assuming that Mr. McKeown
13 and Messrs. Willets and Reid are employees of Brown &
14 Williamson, and I see that what is being said is that
15 management -- and it seems to me perfectly reasonable
16 in this context to say that management is the
17 management of Brown & Williamson, by whom I assume
18 those three individuals were employed -- that
19 management of Brown & Williamson is requesting that
20 they be prepared to discuss with management on a
21 style-by-style basis the positioning, brand character
22 and mapping of our assigned brands.

23 Q. Now, sir, did that meeting take -- I'm sorry,
24 strike that.

25 Did that discussion take place?

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1 A. You're asking me to confirm whether a discussion
2 took place between certain employees of Brown &
3 Williamson and the management of Brown & Williamson.

4 Q. No, sir, actually I'm asking B.A.T. Industries
5 whether a member of its board took part in those
6 discussions. That's what I'm asking.

7 A. Well thank you for clarifying because that's not
8 the --

9 MS. McGARRY: Had you finished your prior
10 answer? I think she cut you off before.

11 THE WITNESS: I'm -- it doesn't -- it
12 doesn't matter.

13 A. But I'm grateful for the clarification you've
14 given because I don't think that's in fact what you
15 asked before, and if that's what you intended, well,
16 thank you for clarifying it.

17 You're asking if Mr. Sheehy came in to see those
18 people during September 1979. I -- I do not know.

19 Q. All right. And did those discussions take
20 place, sir?

21 MS. McGARRY: Objection, asked and
22 answered. What are we, ten times now?

23 A. I can't add anything to the answer I gave I
24 think two questions ago on that subject.

25 Q. Now, sir, are --

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1 Are you aware of the role that Sir Patrick
2 Sheehy when he was chair of the board of B.A.T.
3 Industries played in public communications that
4 Brown & Williamson put out?

5 MS. McGARRY: Objection, assumes facts not
6 in evidence. You may answer.

7 A. I'm not aware of any particular role that
8 Mr. Sheehy took part in in connection with Brown &
9 Williamson publications while he was the chairman of
10 B.A.T. Industries P.L.C.

11 Q. So there's no way that you can answer my
12 questions about that subject; right, sir?

13 MS. McGARRY: That mischaracterizes the
14 witness's testimony.

15 A. Could you read back the question to me, please.

16 Q. Well let me rephrase it.

17 If I were to ask you questions about
18 Mr. Sheehy's involvement in approving or disapproving
19 communications that were made to the public by
20 Brown & Williamson, do you know anything about that?

21 MS. McGARRY: You're representing there was
22 such involvement; is that right? You're not saying
23 did Mr. Sheehy have this involvement. You're
24 representing there was involvement and you're asking
25 the witness whether he knows about what you're

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1 representing as a fact; is that it? I think the
2 question's unclear.

3 MS. WIVELL: Then object.

4 MS. McGARRY: I object.

5 A. Could you clarify the question for me, please.

6 Q. Sir, did Mr. Sheehy have involvement in
7 approving public statements made by Brown &
8 Williamson?

9 A. I'm not aware of any specific instance.

10 Q. You --

11 A. He may have done; he may not have done. I
12 don't -- I simply don't know. I'm not aware that he
13 did.

14 Q. You just don't know one way or the other;
15 right?

16 MS. McGARRY: Objection, mischaracterizes
17 the witness's testimony.

18 A. I think in these matters, if you're going to ask
19 me, to take a particular line with me, I think it
20 would be quite fair to me to actually present me with
21 facts and then see whether I know the facts or I
22 don't know the facts. You're asking me to speculate
23 an awful lot about things that I'm -- I'm -- I
24 really -- I can't be more helpful than I'm trying to
25 be. If you want to present particular facts to me,

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1 I'm very happy to do the best I can to tell you what
2 I do and do not know.

3 Q. Sir, Mr. Sheehy had involvement in approving
4 public statements made by Brown & Williamson, didn't
5 he?

6 MS. McGARRY: Objection, assumes facts not
7 in evidence.

8 A. I -- I do not know.

9 Q. And if I handed you a document, you wouldn't
10 know anything more than was on the face of that
11 document, would you, sir, about --

12 MS. McGARRY: Objection.

13 Q. -- that subject?

14 MS. McGARRY: Objection, calls for
15 speculation. Why don't you hand him the document.

16 A. It's not only speculation. It's also a
17 mischaracterization. I mean, I was -- I have been
18 the company secretary of B.A.T. Industries since
19 1993, and for at least two or nearly three years of
20 my tenure -- two years of my tenure as secretary, Sir
21 Patrick Sheehy was the chairman of the board of
22 B.A.T. Industries.

23 Now you did raise a question in respect of Sir
24 Patrick Sheehy's chairmanship of the board of B.A.T.
25 Industries, so it is just possible that if you

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1 produce documents or you make -- or you propose facts
2 to me, that I may have some knowledge of them.

3 MS. WIVELL: Well I would like B.A.T.
4 Industries to produce a witness immediately who is
5 knowledgeable on whether or not Mr. Sheehy approved
6 public statements that were issued by Brown &
7 Williamson so that I don't have to waste my time with
8 this witness.

9 Q. Now, sir, you are aware that from --

10 MS. McGARRY: We're going to take a break
11 now. I don't think the witness wants to take any
12 more abuse at this particular time.

13 MS. WIVELL: I haven't been abusive to the
14 witness at all, and I just want the record to reflect
15 it's counsel who wants to take the break and not the
16 witness.

17 THE WITNESS: Well perhaps --

18 MS. WIVELL: We can go off the record.

19 THE REPORTER: Off the record, please.

20 (Recess taken.)

21 BY MS. WIVELL:

22 Q. Sir, are you aware of a meeting that took place
23 between representatives of Brown & Williamson and
24 members of the board of B.A.T. Industries at the
25 Chelwood Conference Centre?

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1 A. Could you please tell me -- give me a date or
2 something.

3 Q. In 1991.

4 A. I'm not specifically aware of any meeting, no.
5 (Plaintiffs' Exhibit 642 was marked
6 for identification.)

7 BY MS. WIVELL:

8 Q. Sir, showing you what's been marked as
9 Exhibit 642, this is a document that begins with
10 Bates number 583223073; right?

11 A. Correct.

12 Q. And this is a memo from Rufus Honeycutt to S. L.
13 Raymond; right?

14 A. Yeah, it's -- well it's certainly a memo from
15 someone with the initials R. H. Honeycutt to S. L.
16 Raymond, yes.

17 Q. All right. Mr. Honeycutt's a Brown & Williamson
18 employee, isn't he, sir?

19 A. Well I -- I -- I don't know whether he is or
20 isn't, but I must assume that since he's written
21 on -- well no, I just don't know. I mean, his -- his
22 name is on the bottom of the document and the
23 document is headed "BROWN & WILLIAMSON TOBACCO
24 CORPORATION," but I -- I don't know.

25 Q. Do you know who S. L. Raymond is?

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1 A. I do not know who S. L. Raymond is, no.

2 Q. There is a reference at the beginning of the
3 third paragraph that says "Another valuable aspect of
4 MDP number 79 was the chance to meet and hear members
5 of the Board of BAT Industries"; right?

6 A. "... a chance to meet and hear members of the
7 board of BAT Industries," yes, it does say that.

8 Q. All right. And if --

9 In the second paragraph it refers to a -- a
10 meeting that took place at Chelwood; right?

11 A. I'm sorry, in which paragraph?

12 Q. The second paragraph, sir.

13 A. Yes, it does, yes.

14 Q. Do you know what happened at the meeting that's
15 referred to in this document?

16 A. I'm going to have to ask you, please, to let me
17 read the -- read the -- read the document.

18 Q. Well --

19 MS. McGARRY: Sure.

20 Q. -- before you read the document, can you just
21 answer my question. My question is: Sir, do you
22 know without reading the document what happened at
23 the meeting referred to in this document?

24 A. I do not -- not know what happened at the
25 meeting referred to in this document, but I do know

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1 what the expression "MDP" means and I do understand
2 the reference "MDP" to mean "management -- management
3 development program," and Chelwood, as we have
4 previously established, was a management
5 development -- it was a center where meetings took
6 place and it was in fact the center where primarily
7 junior managers, those occupying junior management
8 positions, in the group came together from all
9 different countries and different companies and
10 learned new skills, new management skills, to develop
11 their careers and to enable them to progress into
12 senior management positions. And similar courses
13 were also provided for middle managers and have in
14 the past also been provided for the very senior level
15 of managers.

16 And that is my understanding of the expression
17 "MDP," and the reference to 79 would be MDP, the
18 79th MDP course.

19 Q. You understand that the MDPs were sponsored by
20 B.A.T. Industries; right?

21 A. I understand that the MDPs were sponsored by the
22 operating companies and were facilitated -- certainly
23 the one I went on was facilitated by B.A.T.
24 Industries and that what happens, I think I have
25 previously testified, was that the operating

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1 companies would send their, if I may use the
2 expression, high fliers or potential high fliers to
3 Chelwood to improve their management skills.
4 Q. It would be fair to say that -- well I'm sorry,
5 strike that.

6 Did you attend MDP 79?

7 A. I did not attend MDP 79. Well I -- I don't
8 think I attended MDP 79. I can't be absolutely
9 certain. As I say, I did attend an MDP course, but
10 I -- I can't be certain exactly when it was. It
11 would have been obviously after October 1990, when I
12 joined B.A.T. Industries, but I believe it was later
13 than May 31 -- certainly later than May 31, 1991.

14 Q. Would it be fair to say that if I were to ask
15 you questions right now without you reading this
16 document about what happened at MDP 79, you could not
17 answer them?

18 A. I think --

19 MS. McGARRY: Beyond what he's already
20 described.

21 A. Yes, beyond what I've already described,
22 that's -- that's fair, yes.

23 Q. All right. Sir, Sir Patrick Sheehy while he was
24 chair of B.A.T. Industries participated in the debate
25 on smoking-and-health issues, didn't he?

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1 A. Could -- could you -- are you -- could you
2 clarify for me whether you're talking about a
3 specific debate or whether you're asking whether Sir
4 Patrick Sheehy discussed the issues of smoking and
5 health or was involved in issues of smoking and
6 health or -- because I -- I don't understand the --
7 the question's just too vague for me.

8 Q. All right. Well, isn't it true that Sir Patrick
9 Sheehy while he was chairman of B.A.T. Industries was
10 actively involved in putting forth the company's
11 position that there was no causation between
12 cigarette smoking and disease?

13 A. When we were here together yesterday, we looked
14 at a document dated 1984, I think entitled "Legal
15 Considerations on Smoking and Health Policy," and we
16 determined that this was a policy statement by the
17 board of B.A.T. Industries. And in 1984, as I've
18 previously testified, Sir Patrick Sheehy was the
19 chairman of B.A.T. Industries.

20 Now since this was a policy statement by the
21 board of B.A.T. Industries, it is, I think, logical
22 that Sir Patrick Sheehy would have been involved in
23 that policy statement, and I think the policy
24 statement speaks for itself as to what the policy of
25 the group was and what the view -- view of the group

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1 was as regards the issue of causation.

2 Q. Putting aside the policy statement for a moment,
3 sir, isn't it also true that Sir Patrick Sheehy while
4 he was chair of B.A.T. Industries was actively
5 involved in directing the company's position that
6 smoking does not cause disease?

7 MS. McGARRY: Object to the form of the
8 question.

9 A. Could you clarify "actively involved" for me
10 because I'm having some -- some difficulty with
11 this.

12 Q. Well he -- he sent out memos to the companies in
13 support of the position that smoking does not cause
14 disease?

15 A. It -- it's entirely possible that he did.

16 (Plaintiffs' Exhibit 643 was marked
17 for identification.)

18 BY MS. WIVELL:

19 Q. Sir, showing you what's been marked as
20 Plaintiffs' Exhibit 643, this begins with the Bates
21 number 202213866; right?

22 A. It does indeed, yes.

23 Q. All right. And the first page is an
24 attachment -- I'm sorry, strike that.

25 The first page is a memo from Patrick Sheehy

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1 entitled "Smoking and Health"; right?

2 A. The first page is a communi -- communication

3 from Patrick Sheehy entitled "Smoking and Health."

4 Q. And according to the document, it was circulated

5 to all number ones of tobacco companies?

6 A. The document bears the statement "Circulation:

7 All Number 1's of Tobacco Companies."

8 Q. And it was sent out to members of the B.A.T.

9 Industries board and other individuals; right?

10 A. Whether it was or wasn't, I don't obviously have

11 any specific knowledge, but certainly the document

12 says for -- for copying to members of the B.A.T.

13 Industries board and -- and also members of the BATCO

14 board and -- and some other specified individuals.

15 Q. Now, sir, this document begins by saying "You

16 will know that I believe we have a strong case, both

17 as an industry and as a company, in refuting the

18 highly emotive claims made by the anti-smoking lobby

19 regarding the dangers of smoking"; correct?

20 A. The document says that, yes.

21 Q. It goes on to say "I have a continuing active

22 involvement in this debate and have been encouraged

23 by a number of recent developments in the field of

24 epidemiology which appear to support our case and

25 which deserve to be more widely known"; right?

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1 A. The document says that, yes.

2 Q. And, sir, did Sir Patrick Sheehy -- strike
3 that.

4 Was Sir Patrick Sheehy actively involved in
5 promoting on behalf of B.A.T. Industries the belief
6 that cigarette smoking does not cause disease?

7 A. Well that's a -- a -- a difficult question
8 because I don't think I'm in a position to deny
9 that -- what Sir Patrick has actually said himself.
10 He says "I have a continuing active involvement in
11 this debate," which I believe is a reference back to
12 the previous paragraph where he says "I believe we
13 have a strong case, both as an industry and as a
14 company, in refuting the highly emotive claims made
15 by the anti-smoking lobby regarding the dangers of
16 smoking."

17 And while we're on this subject, I -- I think I
18 would just want to refer to another paragraph that's
19 contained in this letter, because while Sir Patrick
20 appears from this document to take that view that, as
21 he says, "we have a strong case ... refuting the
22 highly emotive claims made by the anti-smoking lobby
23 regarding the dangers of smoking," it's interesting
24 that if one looks at the fourth paragraph -- and I
25 think I'd like to quote the four paragraph actually.

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1 "Professor Burch provides a balanced view and he is
2 careful to make it clear that although experiments
3 which have been rigorously designed to ensure that
4 they provide a valid result show no causal
5 association between smoking and disease, it is not
6 possible to mount experiments on a sufficient scale
7 and over a sufficient time period such that this lack
8 of correlation can be proved beyond all reasonable
9 doubt."

10 In other words, Sir Patrick is saying is -- what
11 Sir Patrick is saying is that it is not -- the case
12 is not an open-and-shut case. He believes there to
13 be no causal association between smoking and disease,
14 but it's not possible to be absolutely definitive on
15 the subject, according to Professor Burch.

16 Q. Move to strike the nonresponsive portion of the
17 answer.

18 Now, sir, Sir Patrick Sheehy attached a paper to
19 his memo, didn't he?

20 A. He says in the last paragraph "I hope that you
21 will find this paper encouraging and that the Tobacco
22 Companies ... find ways of using it," et cetera,
23 et cetera, et cetera, and I'm just trying to find the
24 part in the letter where he actually refers to the --
25 yes, I think it's the third paragraph. "I thought

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1 that it would be worthwhile to circulate copies of
2 the attached paper." Yes, he does have an attachment
3 to his paper.

4 Q. And the et cetera, et cetera that you referred
5 to in the last paragraph was his stated hope that the
6 paper would be used not only internally, but in
7 discussions with authorities and in a more general
8 public relations context in showing that although the
9 alternative view may be not as attractive to the
10 media, the claims of the opponents can and should be
11 challenged; right?

12 A. "... the extreme claims made by our opponents
13 can and should be challenged" is I think the --

14 MS. McGARRY: I didn't have time to
15 object. It was an incomplete quotation, including
16 more than what Mr. Wilson pointed out. I just wanted
17 to make that objection.

18 Q. Now, sir, you understand that B.A.T. Industries
19 publicly disputed the fact that cigarette smoking
20 caused disease; right?

21 MS. McGARRY: Objection, assumes facts not
22 in evidence.

23 A. B.A.T. Industries' position on this I think
24 is -- is -- is fairly clear. It recognizes that
25 there is a statistical association; in other words,

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1 that smoking may be a risk factor in certain
2 diseases. What it denies is that there -- that
3 scientific proof has been advanced that there is a
4 causal connection between smoking and certain
5 diseases.

6 Q. And it has denied that publicly, hasn't it,
7 sir?

8 MS. McGARRY: I'm -- I will permit the
9 witness to answer, but I'm going to object on the
10 grounds that this is beyond the scope of the notice
11 of the deposition. In fact, I think earlier this
12 week you deposed someone on the subject of public
13 statements by B.A.T. Industries on smoking and
14 health, Mr. Proctor. But I'll let the witness answer
15 this particular question.

16 A. I believe representatives of B.A.T. Industries
17 have publicly stated that position, yes.

18 Q. And they publicly stated that position before
19 the fall of 1994; correct?

20 A. Before the fall of 1994? I can't -- I can't
21 remember a specific -- specific event. It's -- it's
22 possible.

23 Q. It's probable, isn't it, sir, since that policy
24 that it's based on was initiated in 1984? Right?

25 MS. McGARRY: I am objecting. The

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1 witness -- the question calls for speculation. It's
2 beyond the scope of the notice, and B.A.T. Industries
3 already produced a witness to you on this subject.

4 A. It's certainly possible, as I said before.

5 Q. Sir, and when representatives of B.A.T.
6 Industries made those statements, they expected --
7 strike that.

8 When representatives of B.A.T. Industries made
9 those statements that you've just referred to, it
10 would be reasonable for people to hear them and rely
11 on them, wouldn't it, sir?

12 MS. McGARRY: Objection. This is beyond
13 the scope of this notice. We've already produced a
14 30.02(f) witness on this subject.

15 A. Could you read back the question, please.

16 Q. Certainly. And when representatives of B.A.T.
17 Industries made the statements that you've just
18 referred to, it would be reasonable for people who
19 heard them to rely on them, wouldn't it, sir?

20 MS. McGARRY: Same objection.

21 A. I would anticipate that people would have heard
22 those statements or would have seen them reproduced.
23 Whether it was -- did you say rely on them?

24 Q. Reasonable for people to rely on them, yes.

25 A. May or may not have. I really don't know.

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1 Q. All right. Well let me ask it this way: When
2 representatives of B.A.T. Industries made the
3 statements that you just referred to, would it be
4 reasonable for people to believe what B.A.T.
5 Industries was saying?

6 MS. McGARRY: Come on, Martha, this is
7 totally outside the scope. We already -- you asked
8 for a 30.02(f) witness on this subject and we
9 produced somebody. Does this mean that you're done
10 with your jurisdiction questions? This is completely
11 unfair. This is not the subject matter of this
12 deposition. Can you tell me what this has to do with
13 jurisdiction?

14 If you're not going to link it up for me, I'm
15 not going to let the witness answer.

16 MS. WIVELL: Let me rephrase the question.
17 BY MS. WIVELL:

18 Q. When representatives of B.A.T. Industries made
19 public statements on the subject that you just
20 referred to, it would be reasonable for people who
21 heard them to believe what B.A.T. Industries was
22 saying, wouldn't it?

23 MS. McGARRY: Object to the form of the
24 question, object it's beyond the scope. And you
25 still haven't explained what this has to do with

1 jurisdiction. We've already produced a witness to
2 you on this exact topic.

3 A. Could you just read the question back again,
4 please.

5 Q. Certainly. When representatives --

6 MS. McGARRY: "When representatives of" --

7 MS. WIVELL: I'll read it, Counsel. Thank
8 you.

9 MS. McGARRY: Are you going to read it or
10 are you rephrasing it?

11 MS. WIVELL: I said I would read it.

12 MS. McGARRY: Okay.

13 Q. When representatives of B.A.T. Industries made
14 public statements on the subject that you just
15 referred to, it would be reasonable for people who
16 heard them to believe what B.A.T. Industries was
17 saying, wouldn't it, sir?

18 MS. McGARRY: I object to the question.

19 A. I find it very difficult to state what other
20 people should believe, but clearly if the company's
21 position is something, it's unlikely that the company
22 is going to say it would be unreasonable for them to
23 believe the company's position.

24 Q. Okay. And, sir, do you know if public
25 statements made on the subject by B.A.T. Industries

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1 representatives were published here in the United
2 States?

3 A. I -- I have no specific knowledge as to whether
4 they were or not. I'm -- I'm sorry.

5 Q. Now, sir, in addition to the meeting at Chelwood
6 that's discussed in Exhibit 643, the chairman of
7 B.A.T. Industries would hold annual conferences at
8 which subjects like smoking and health were
9 discussed; right?

10 A. I think I testified yesterday that conferences
11 were organized or conferences to which the CEOs, the
12 number ones of various businesses in the group, met.
13 I can't be sure as to the -- as I think I said
14 yesterday, as to exactly the exact frequency of these
15 meetings and exactly in which years they were held.
16 And I certainly can't confirm or deny that the
17 subject you mentioned was discussed at those
18 meetings.

19 (Plaintiffs' Exhibit 644 was marked
20 for identification.)

21 BY MS. WIVELL:

22 Q. Sir, showing you what's been marked as
23 Plaintiffs' Exhibit 644, this is a document that
24 begins with the Bates number 107318466; right?

25 A. Correct, yes.

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1 Q. This is a memo dated August 17th, 1983 from
2 E. A. A. Bruell to Dr. Ray Thornton?
3 A. It is, yes, a communication from E. A. A. Bruell
4 to Dr. R. A. Thornton.
5 Q. And the subject is "CAC" and then Roman numeral
6 "VIII"; right?
7 A. Correct, that's the heading on the document.
8 Q. All right. Have you learned what "CAC" means,
9 sir?

10 MS. McGARRY: Objection.

11 A. I think I said yesterday -- I think you asked me
12 yesterday to undertake some investigation into the
13 subject, and I think we have already indicated this
14 morning that we are seeking clarification and are
15 going to come back to you on that subject, but I -- I
16 think I also said yesterday that I believed "CAC" was
17 a reference to Chairman's Advisory Conference or
18 something along those lines. I'm not absolutely
19 precise on it, but I --

20 MS. McGARRY: Actually what we said this
21 morning is that we determined that the -- we already
22 did an investigation and determined that
23 Mr. Broughton is knowledgeable about this subject and
24 Mr. Broughton has been deposed and Mr. Broughton was
25 in fact deposed about CAC conferences, so I don't

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1 think we're going to be doing -- undertaking any
2 further investigation.

3 MS. WIVELL: I think the question that I
4 had asked yesterday that wasn't answered was whether
5 the chairman that's referred to was the chairman of
6 B.A.T. Industries or the chairman of BATCO, and I
7 still would like a -- an answer to that.

8 Q. And you don't know that as you sit here today, I
9 take it.

10 A. I don't know that at this present time.

11 Q. All right. Sir, the first sentence of this
12 document states "The Chairman of BAT Industries will
13 be holding his annual conference from the 26th to"
14 the "29th" Sep -- "September in Friedrichsruhe, West
15 Germany"; correct?

16 A. The first sentence of the document says that,
17 and I would like, please, to read this document
18 before you ask me further questions --

19 Q. All right.

20 A. -- on it.

21 Q. Well before we go on, are you saying you've not
22 seen this document before, sir?

23 A. I don't believe I have seen this document
24 before, no.

25 Q. All right. You can go ahead and read it.

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1 A. Thank you.

2 MS. WIVELL: Well maybe I should ask this:

3 What time is it? Should we take our lunch break?

4 MS. McGARRY: 12:20.

5 MS. WIVELL: All right. Why don't we take
6 our lunch break, come back at quarter to 2.

7 THE REPORTER: Off the record, please.

8 (Luncheon recess taken at 12:19 o'clock
9 p.m.)

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1 AFTERNOON SESSION

2 (Deposition reconvened at 1:40 o'clock
3 p.m.)

4 BY MS. WIVELL:

5 Q. All right. Before we go back to the document
6 that we were talking about before the noon recess, I
7 understand, Mr. Wilson, that you have been able to
8 find the answers to some of the questions that I
9 asked you yesterday. Is that right?

10 A. Correct.

11 Q. Okay. I think one of the questions involved
12 Plaintiffs' Exhibit 626, the B.A.T. board guidelines
13 for public affairs.

14 A. I believe, yes.

15 MS. McGARRY: That's 624.

16 MS. WIVELL: I'm sorry. Let me restate the
17 question.

18 Q. I think one of the questions involved
19 Plaintiffs' Exhibit 624, the -- the B.A.T. board
20 guidelines for public affairs. Is that right?

21 A. Yes, it did, yes.

22 Q. All right. And I think I asked you was that
23 document sent to Brown & Williamson.

24 A. I think you did, yes.

25 Q. All right. And do you know the answer now?

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1 A. The answer is that it appears to have been sent
2 to Brown & Williamson, yes.

3 Q. All right. Was it sent by B.A.T. Industries or
4 BATCO?

5 A. It was sent by someone who was at that time in
6 the employment of B.A.T. Industries.

7 Q. All right. Now the board that's referred to
8 here, do you know whether the reference to "BAT
9 BOARD" is to BATCO or B.A.T. Industries?

10 MS. McGARRY: Do you need the exhibit?

11 THE WITNESS: It would be helpful. Thank
12 you.

13 A. I believe the reference is to the board of
14 BATCO.

15 Q. All right. Have you checked the minutes of
16 B.A.T. Industries to determine whether they adopted
17 these public affairs guidelines?

18 A. Yes. The minutes of B.A.T. Industries' board
19 have been checked and there is no reference to
20 this -- this document in those minutes.

21 Q. All right. Have you checked the minutes of the
22 BATCO board?

23 MS. McGARRY: No, I think we only
24 investigated what was in our B.A.T. Industries
25 files.

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1 Q. But at the time this document was sent to
2 Brown & Williamson, T. J. Walker was an employee of
3 B.A.T. Industries?

4 A. T. J. Walker was an employee of B.A.T.
5 Industries at the time this document was sent, and I
6 think the other relevant consideration, if I may just
7 refer to it, is that the -- the document itself, the
8 attachment headed "1982 B.A.T. BOARD GUIDELINES,
9 PUBLIC AFFAIRS" actually carries the logo not of
10 B.A.T. Industries P.L.C., which we've seen on
11 numerous documents that you've presented to -- as
12 exhibits during this deposition, but in fact carries
13 the logo which was commonly used by British-American
14 Tobacco Company and I believe is in fact still used
15 today.

16 Q. Move to strike the nonresponsive portion of the
17 answer. Sir, was --

18 MS. McGARRY: It's certainly responsive.

19 MS. WIVELL: Well I had asked him was T. J.
20 Walker an employee of B.A.T. Industries at the time
21 the document was sent.

22 Q. And the answer to that question is yes, sir?

23 A. The answer to that question is yes.

24 Q. What position did he have?

25 A. He worked in the chairman's office.

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1 Q. And what did he do for the chairman?

2 A. He was an assistant of -- of some sort. I
3 said -- I think I just said "the chairman's office."
4 I think in fact he may have been an assistant to the
5 vice-chairman at that time, either the chairman or
6 the vice-chairman, but he was an assistant in the
7 office. He held no position as corporate secretary
8 or assistant secretary or anything of that nature.
9 He may have been -- he appears to have been in the
10 nature of a personal -- an administrative assistant
11 of some sort.

12 Q. Now I understand that another question that you
13 now have the answer to concerns Plaintiffs' Exhibit
14 626. Is that right?

15 A. Yes, indeed, yes.

16 Q. All right. And that is the proposed terms of
17 reference for the Tobacco Strategy Group?

18 A. Yes, the -- the proposed new terms of reference
19 for discussion at the TSG meeting on the 11th of May
20 1994.

21 Q. Do you understand -- or strike that.

22 Do you now know whether or not the document
23 Plaintiffs' Exhibit 626 was discussed at the Tobacco
24 Strategy Group?

25 A. I believe it was discussed at that meeting and

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1 the members of the TSG were asked to give further
2 comments on it.

3 Q. All right. And were the terms of reference
4 eventually adopted by the Tobacco Strategy Group?

5 A. It was not considered further by the Tobacco
6 Strategy Group.

7 Q. At any time?

8 A. Not so far as I can determine.

9 Q. All right. Were the terms of reference that had
10 been originally approved in 1984 and then reviewed in
11 1988 ever rejected by the Tobacco Strategy Review
12 Team?

13 A. I'm not aware that they were.

14 Q. Would it be fair to say that, to the best of
15 your knowledge, then the Tobacco Strategy Review Team
16 or, as it was later called, the Tobacco Strategy
17 Group operated under the terms of reference that were
18 initially adopted in 1984?

19 A. I have no knowledge that would -- that would
20 dispute that, save in respect that insofar as they
21 were amended in 1988.

22 Q. All right. I also understand that your counsel
23 is willing to let you answer a question that I asked
24 earlier in the day concerning whether Mr. Broughton's
25 approval was sought by Brown & Williamson. Do you

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1 recall that line of questioning, sir?

2 A. Yes, I do.

3 MS. McGARRY: Well I -- I said I'd permit
4 him to answer whether or not he knows.

5 MS. WIVELL: I know. I'm just asking him
6 to recall that line of questioning.

7 MS. McGARRY: Okay.

8 Q. Sir, was Mr. Broughton's approval sought by
9 Brown & Williamson before it agreed to drop its
10 lawsuit against Jeffrey Wigand as part of the tobacco
11 settlement negotiations that took place this summer?

12 A. I do not know.

13 Q. Do you have the answer to any of the other
14 questions that I asked you yesterday that you were
15 unable to answer?

16 MS. McGARRY: I'm not aware of any others.
17 I -- I thought we pulled up everything that was --
18 yeah, he was going to clarify testimony about
19 insurance, but that wasn't one of the open questions,
20 I don't think.

21 MS. WIVELL: All right. Let me just check
22 here.

23 Q. Oh, I yesterday asked you about whether the
24 phrase -- or what the phrase the, quote, "BAT
25 Industries Tobacco Division" meant. Do you know

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1 that, sir?

2 MS. McGARRY: That was -- we addressed that
3 earlier. That's in the document written by Carl
4 Schoenbachler or bachler, whatever.

5 THE WITNESS: Schoenbachler.

6 MS. McGARRY: And we determined that he's
7 never been an employee of B.A.T. Industries and so
8 B.A.T. Industries doesn't know what he meant.

9 Q. Well, sir, do you know what the phrase "the BAT
10 Industries Tobacco Division" means?

11 A. It doesn't have any meaning to me at all.

12 Q. I think I asked you yesterday whether the board
13 of B.A.T. Industries P.L.C. approved Sir Patrick
14 Sheehy setting up the Tobacco Strategy Review Team.
15 Do you recall that generally, sir?

16 A. I -- yes, I have a recollection of you asking a
17 question along those lines.

18 Q. I think --

19 MS. McGARRY: I think we covered yesterday
20 that that was testified to by Mr. Broughton and that
21 Mr. Wilson had reviewed Mr. Broughton's deposition
22 testimony and he had no information to the contrary.

23 MS. WIVELL: All right. Well let me just
24 ask the question, sir.

25 Q. Do you know as you sit here today whether the

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1 B.A.T. Industries board approved Sir Patrick Sheehy
2 setting up the Tobacco Strategy Review Team?

3 A. Sorry, could you just repeat the question
4 again. I beg your pardon.

5 Q. Do you know as you sit here today whether --
6 strike that.

7 Did the B.A.T. Industries board approve Sir
8 Patrick Sheehy setting up the Tobacco Strategy Review
9 Team?

10 A. I do not know, but I gave testimony that I had
11 seen Mr. Broughton's answer in deposition which said
12 that Sir Patrick Sheehy had established the Tobacco
13 Strategy Review Team.

14 Q. But it would be fair to say you still don't know
15 whether the board approved Sir Patrick's doing so;
16 right?

17 A. I -- at the moment, no, I do not know.

18 Q. I asked you yesterday whether -- oh, I'm sorry,
19 strike that.

20 I asked you yesterday what the purposes of the
21 CAC were. Do you recall that generally?

22 A. I do recall a line of questioning on the CAC,
23 yeah.

24 MS. McGARRY: And I told you this morning
25 we hadn't done any further investigation because we

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1 determined that Mr. Broughton knows about the
2 purposes of the CAC conferences and you asked
3 Mr. Broughton that exact same question and
4 Mr. Broughton answered it, and therefore you have
5 taken the deposition of a representative of B.A.T.
6 Industries on the issue and so Mr. Wilson has not
7 done any further investigation.

8 MS. WIVELL: All right. I said at that
9 time I would appreciate it if you would find out and
10 report back so I could have B.A.T. Industries'
11 testimony on that subject or be provided with a
12 witness who could answer the question.

13 Q. And, Mr. Wilson, do you know the purpose of the
14 CAC?

15 A. No, I do not.

16 MS. WIVELL: Okay. I would repeat my
17 request.

18 Q. I also asked you yesterday whether B.A.T.
19 Industries approved the contract under which Dr. Lee
20 was hired to do the cohort analysis. Do you recall
21 that generally?

22 A. I do recall that question, yes.

23 Q. Did B.A.T. Industries approve the contract under
24 which Dr. Lee was hired to do the cohort analysis?

25 A. A review of the minutes of the board of B.A.T.

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1 Industries indicate no reference to such a contract,
2 nor do the registers of any documents or contracts
3 entered into by B.A.T. Industries demonstrate that it
4 was ever connected with that contract.

5 Q. Sir, I asked you yesterday whether the
6 Compendium of Epidemiological Studies was supplied to
7 Brown & Williamson for its use. Do you recall that,
8 sir?

9 A. Yes, I think I do recall.

10 Q. The Compendium of Epidemiological Studies was
11 supplied to Brown & Williamson for its use, wasn't
12 it, sir?

13 A. I -- I -- I'm -- I'm afraid I can't recall. I
14 simply don't know.

15 Q. There were some questions that I asked you this
16 morning that you were unable to answer. Have you
17 been able to answer -- or find out the answer to any
18 of those questions over the lunch break?

19 A. I -- could you please refresh my memory as to
20 what the questions were.

21 Q. Well there were several and I don't have a
22 transcript written out here. I recall questions
23 concerning public statements that were approved by
24 Mr. Sheehy. Do you recall that, sir?

25 A. I recall some questions along those lines, but

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1 I'd like the questions to be read back to me. My
2 recollection is no more firm at the moment than
3 yours.

4 Q. Well let me ask you this: Over the lunch hour
5 did you try and investigate to find out the answers
6 to any of the questions that I asked this morning?

7 A. I think I answered the questions that were put
8 to me this morning. I didn't take any steps to
9 obtain further clarification during the lunch break.

10 MS. McGARRY: Mr. Wilson also would like
11 the opportunity to correct his testimony yesterday
12 concerning the procurement of excess public liability
13 policies, if that's all right.

14 MS. WIVELL: Well I'd prefer you to do it
15 in your direct exam --

16 MS. McGARRY: That's fine.

17 MS. WIVELL: -- if you wouldn't mind.

18 BY MS. WIVELL:

19 Q. Sir, can we turn our attention to Exhibit 644.

20 A. Yes.

21 Q. Now you've had the opportunity to read this;
22 correct?

23 A. Yes, I have.

24 Q. Are there minutes of the CAC meeting that are
25 referred to here?

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- 1 A. If there are, I've never seen them.
- 2 Q. You understand that there was a debate
3 concerning the smoking -- I'm sorry, strike that.
4 You understand that at this meeting there was a
5 debate on smoking issues?
- 6 A. I -- the -- I understand that the letter says
7 that on Tuesday, the 27th, which I take to be
8 Tuesday, the 27th of September 1983, at 0845 hours
9 there would be a debate on smoking issues.
- 10 Q. There was such a debate at the CAC meeting that
11 is referenced in Exhibit 644, wasn't there, sir?
- 12 A. I have no knowledge as to whether there was or
13 was not.
- 14 Q. Do you have any knowledge of what went on there
15 other than what you've read in this document?
- 16 A. No knowledge at all, no.
- 17 Q. Okay. So beyond what's here, you couldn't
18 answer any of my questions concerning what was said
19 at that meeting; right?
- 20 A. I couldn't answer your questions concerning what
21 was said at a meeting which took place in August
22 1983, no.
- 23 Q. And you have never discussed what went on at
24 that meeting with anyone?
- 25 A. I have not, no.

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1 Q. Okay. So as you sit here today, you have no
2 information to dispute what is said in this memo, do
3 you, sir?

4 A. I have no information which will confirm or
5 dispute what is said in this memo.

6 Q. Were there handouts of presentations that were
7 made at this meeting, sir?

8 A. I've previously testified that I do not know
9 what took place at this meeting.

10 Q. And I think my question's a little bit
11 different.

12 Have you seen handouts which refer to what went
13 on at this meeting?

14 A. I have no recollection of having seen handouts
15 of matters which were referred to --

16 Q. Now --

17 A. -- at this meeting.

18 Q. Sorry.

19 Now at one time B.A.T. Industries had financial
20 invest -- investments in biotechnical agribusiness
21 ventures; correct?

22 A. Yes, it did, yes.

23 Q. All right. And with whom -- strike that.

24 What were the nature of those investments?

25 A. They were investments in --

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1 In the first instance, they were investments in
2 joint-venture companies which carried on
3 biotechnology agribusiness research on a -- I think
4 on a number of agricultural plants in -- I think in
5 South America, and in the second instance there was
6 an investment in a company in the United Kingdom
7 which I believe carried on similar research.

8 Q. Who was the joint venture in South America
9 with?

10 A. I believe the joint venture was between one of
11 the subsidiaries of B.A.T. Industries and a company
12 called Native Plant, NPI. I think it was Native
13 Plants, I think was the name of the -- NPI is I think
14 what it was called.

15 Q. And the plant that -- strike that.

16 One of the agricultural plants that was being
17 investigated as part of this joint venture was
18 tobacco, wasn't it, sir?

19 A. I believe there was research on the tobacco
20 plant.

21 Q. All right. And what was the nature of the
22 research on the tobacco plant that was being done as
23 part of the NIP joint venture?

24 A. I --

25 MS. McGARRY: NPI.

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1 MS. WIVELL: Sorry. Let me rephrase the
2 question.

3 Q. What was the nature of the research of the
4 tobacco plant that was being done as part of the NPI
5 joint venture?

6 A. I think it was basic -- I -- I really don't
7 know. It was basic -- basic research. What I do
8 know is that it -- none of the research resulted in
9 any practical application.

10 Q. Sir, you said it was a joint venture. Who were
11 the parties to the joint venture?

12 MS. McGARRY: Objection, asked and
13 answered. We're still on South America.

14 A. I think I previously testified that the parties
15 to the joint venture were a subsidiary of B.A.T.
16 Industries in South America and NPI.

17 Q. And B.A.T. Industries was not a direct party?

18 A. In that joint venture --

19 Q. Yes, sir.

20 A. -- not as far as I know. I have to -- on this
21 subject, I have to say my recollection is a little
22 bit vague.

23 Q. All right. You understand that the research
24 that was being done was basic molecular research?

25 A. I think that's correct, yes.

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1 Q. And what was -- strike that.

2 The purpose of this research was to try and
3 genetically engineer tobacco with a higher nicotine
4 content; isn't that true?

5 A. Can I -- let me just step back and put the thing
6 into a -- into a perspective. My understanding of
7 the situation is that in the early 1980s or mid-1980s
8 B.A.T. Industries as a -- as an investment company,
9 as a holding company owning investments, was looking
10 at ways of diversifying. It was always looking at
11 ways of diversifying to see where else it could add
12 value to the business, and I believe that Sir Patrick
13 Sheehy had a particular interest in biotechnology and
14 thought -- saw the area of biotechnology as a -- as
15 an additional business area that the company may be
16 able to -- may be able to invest in or to -- you
17 know, to -- to develop as a new business, to add to
18 retail or tobacco or the other things the company was
19 then -- then held investments in.

20 And that was the basis of these -- these --
21 these joint ventures. That was the purpose of the --
22 the -- the investments, and as I've said before, one
23 of the agricultural plants that the joint ventures
24 or -- research done by the joint ventures actually
25 was done on ag -- the tobacco plant.

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1 Q. And as part of that research, work was done on
2 trying to genetically engineer tobacco plants so that
3 they would have an increased nicotine content; isn't
4 that true?

5 A. I -- that's just too specific for me to answer.
6 I don't know whether that is -- is -- I -- I don't
7 have a recollection of that being the case. I -- I
8 just don't know that.

9 Q. All right. Is --
10 Have you described for us everything you know
11 about the joint venture with NPI?

12 A. Yes, I think I -- I think I have.

13 Q. Did Sir Patrick actually go to South America to
14 look at the work that was being done?

15 A. I have no knowledge of whether Sir Patrick
16 Sheehy went to South America.

17 Q. Was any of the work that was done done in the
18 United States?

19 A. I have seen a reference somewhere to some
20 analysis in -- yeah, in the United States. I
21 think -- I think -- I think that's right.

22 Q. Where was that analysis done?

23 A. I believe it was Salt Lake City. I think Salt
24 Lake City. I can't tell you what the analysis was
25 and what was done and -- but I -- I think I'm right

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1 in saying that. I'm sorry, my recollection is -- on
2 these matters is fairly vague and the other thing is
3 I'm -- I'm not a scientist, so I don't understand
4 things, you know.

5 Q. What was the nature of the analysis that was
6 done?

7 A. I say I -- I -- I really couldn't tell you.

8 Q. All right. And that was done as part of the
9 joint venture with Native Plants?

10 A. I think it was done as part of the -- the joint
11 venture in South Africa with Native Plants. South
12 America. Sorry. If I said "South Africa" before, I
13 meant South America with Native Plants. I believe
14 that's -- that's right, yes.

15 Q. Now you also mentioned that there was some
16 involvement with an investment in the United
17 Kingdom.

18 A. Yes, that's right.

19 Q. What do you know about that?

20 A. I believe that was an investment with a company
21 called Twyford, and Twyford owned a laboratory and
22 B.A.T. Industries made -- made payments, in --
23 invested in Twyford essentially, made payments to
24 Twyford, and Twyford carried out its research, its
25 own research, at its own laboratory.

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1 Q. What was the nature of the research?

2 A. I think it was again basic research on
3 agricultural plants. I believe that that's the
4 case.

5 Q. On tobacco, wasn't it, sir?

6 A. I don't think it was limited to tobacco. I
7 think it was a range of -- a range of products, which
8 would be, as I said earlier, I think consistent with
9 what I said earlier, which was that B.A.T. or Sir
10 Patrick Sheehy was interested in seeing whether there
11 was another business that the group could invest in
12 as a -- as another -- as an addition to its other
13 businesses.

14 Q. But tobacco was amongst the plants that was
15 looked at for this genetic research; right?

16 A. I think it may have been. I may be confusing
17 that with NPI, but it -- it may have been. I -- I --
18 I can't confirm definitely or -- I'm sorry, I just --
19 just don't know.

20 Q. What was the purpose of the work that was done
21 with Twyford?

22 MS. McGARRY: I'm -- I'm going to permit
23 the witness to answer, but I'm going to object. I
24 don't really see how research done at a laboratory in
25 the United Kingdom is relevant to jurisdiction in

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1 Minnesota. But I'll permit the witness to answer if
2 he knows.

3 A. Could -- could you just read the question back
4 to me, please.

5 Q. Certainly. What was the purpose of the work
6 that was done with Twyford?

7 A. I think the work was done by Twyford, not with
8 Twyford. And I don't really know what the purpose of
9 the work was. I think I said earlier I couldn't even
10 be sure whether they were doing work on the tobacco
11 plant, as you -- you asked me, so I -- I really
12 can't -- I'd be speculating as to the purpose.

13 The general purpose, as I said earlier, I think
14 was that B.A.T. Industries was looking at the
15 possibility of developing a new area of business in
16 which to invest.

17 Q. All right. I'm trying to understand what it was
18 about this research that made Sir Patrick think it
19 was a good potential area for investment. Do you
20 know the answer to that question?

21 A. I don't know the answer, but I can easily
22 understand that in the mid-1980s there would have
23 been a lot of enthusiasm about biotechnology because
24 biotechnology was a very big sort of growth subject I
25 think even then, and I can recollect just from

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1 general knowledge that there was a great deal of
2 interest in the whole subject of biotechnology. And
3 I believe even fairly recently biotechnology
4 companies have been taking major steps forward on the
5 various capital markets where they're -- where
6 they're listed, so I'm not -- not surprised about
7 it.

8 Q. Did NPI or Twyford do any of the work relating
9 to Y-1 tobacco?

10 A. I -- I honestly can't tell you. I -- I just
11 don't know.

12 Q. You understand what "Y-1" refers to, don't you,
13 sir?

14 A. I -- I know I've heard the expression "Y-1." I
15 wouldn't say that I can give you an accurate
16 assessment as to what Y-1 is, but I -- I have a --
17 yeah, I think a --

18 Q. Y-1 --

19 MS. McGARRY: May I just ask for
20 clarification. When you say "NPI," you mean NPI, the
21 company, or the joint venture that was formed between
22 NPI and the --

23 MS. WIVELL: The --

24 MS. McGARRY: -- sub?

25 MS. WIVELL: -- joint venture, the joint

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1 venture.

2 MS. McGARRY: Okay.

3 BY MS. WIVELL:

4 Q. Y-1 was genetically engineered tobacco; right?

5 MS. McGARRY: I object. This is beyond the
6 scope of the jurisdiction notice, but if the witness
7 knows, I'll permit him to answer this question.

8 A. Well I'm not a scientist, but I understand that
9 Y-1 -- my understanding is that Y-1 was a strain of
10 tobacco which was first developed by the -- I believe
11 by the Department of Agriculture here in the United
12 States. I believe that to be the case, but please
13 don't hold me to it because, as I say, I'm not a
14 scientist; I don't understand these things.

15 Q. Did Sir Patrick Sheehy take part in decisions
16 approving the decision to go forward with the
17 development of Y-1?

18 MS. McGARRY: Objection.

19 A. Well I don't really understand. When you talk
20 about decisions to go forward with the development
21 of -- of Y-1, I'm not sure what you're referring to.

22 Q. All right. Well let me back up.

23 You understand that Brown & Williamson entered
24 into contracts with DNAP Labs to develop Y-1?

25 A. No, I don't understand that. I don't have

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1 knowledge of that, sorry.

2 Q. You understand that Y-1 was eventually grown --
3 strike that.

4 Y-1 was eventually grown by Brown & Williamson
5 in South America; right?

6 MS. McGARRY: Objection. I don't see what
7 this has to do with jurisdiction. B&W isn't
8 contesting jurisdiction in this case. Can you
9 explain what this has to do with jurisdiction over
10 B.A.T. Industries.

11 MS. WIVELL: Yes, I'm trying to tie it up
12 and trying to explain it to him since he asked me a
13 question.

14 Q. You understand that --

15 MS. McGARRY: Well I need the explanation
16 before I let the witness go down this road of asking
17 questions that are beyond the scope.

18 MS. WIVELL: I am -- I don't believe it's
19 beyond the scope because I'm trying to determine
20 whether B.A.T. Industries had anything to do with the
21 decision that Brown & Williamson made to engage in
22 the development of Y-1. That's where I'm going.

23 BY MS. WIVELL:

24 Q. Now, sir, let me ask the question again. You
25 under -- strike that.

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1 You -- strike that.

2 Brown & Williamson entered into contracts with
3 DNAP Labs to develop Y-1?

4 A. I -- I think I've just testified that I don't --
5 I have no knowledge of that.

6 Q. And do you have any knowledge of whether Sir
7 Patrick Sheehy or anyone from B.A.T. Industries was
8 involved in the Brown & Williamson decision to enter
9 into those contracts?

10 A. Well I -- I just --

11 MS. McGARRY: I'm going to object because
12 it assumes facts not in evidence, but you may
13 answer.

14 A. I've just testified that I -- I didn't -- I have
15 no knowledge of those contracts, so I certainly have
16 no knowledge of whether anyone at B.A.T. Industries
17 was involved in the decision to enter into any such
18 contracts.

19 MS. WIVELL: Well for the record, I'd like
20 to say that I am deposing B.A.T. Industries and would
21 request that they produce for me a witness who is
22 knowledgable on whether anyone from B.A.T. Industries
23 was involved in the decision to go forward with Y-1
24 and, if so, what that involvement would be.

25 Q. Sir, if --

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1 Do you know anything about the development of
2 Y-1?

3 A. I think I've told you what I know about Y-1.

4 Q. So it would be fair to say that any further
5 questions that I might ask you on that subject you
6 would not be able to answer?

7 A. It would be fair to say that. Yes, it would be
8 fair to say that.

9 Q. All right. Do you know if Y-1 was approved by
10 the -- well strike that.

11 Was Y-1 approved by the Tobacco Strategy Review
12 Team?

13 MS. McGARRY: Objection. The witness said
14 that he doesn't know anything else about --

15 A. I don't know.

16 MS. McGARRY: -- Y-1. I suggest you ask
17 these questions to B&W or Sir Patrick.

18 Is this the affidavit that's referred to, the
19 single affidavit referred to in your predesignation
20 letter?

21 (Plaintiffs' Exhibit 645 was marked
22 for identification.)

23 BY MS. WIVELL:

24 Q. Sir, showing you what's been marked as
25 Plaintiffs' Exhibit 645, this is a copy of an

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1 affidavit which you filed in The State of Florida
2 case; correct?

3 A. Yes. It appears to be so, yes.

4 MS. McGARRY: Can you answer my question,
5 Marti?

6 Q. Sir --

7 MS. McGARRY: Can you answer my question,
8 Marti?

9 MS. WIVELL: I'm not here to have my
10 deposition taken. Now --

11 MS. McGARRY: Okay. Well I'm going to
12 allow -- the designation notice said you were going
13 to ask Mr. Wilson about one affidavit, so this will
14 be the one affidavit you ask him about.

15 MS. WIVELL: And what -- what's the grounds
16 for that, Counsel? I just want to know what --

17 MS. McGARRY: There's a pre --

18 MS. WIVELL: -- rule of law allows you to
19 limit me to one affidavit.

20 MS. McGARRY: There's an order from Judge
21 Fitzpatrick that says you must predesignate the
22 documents you're going to use at a deposition.

23 MS. WIVELL: Uh-huh.

24 MS. McGARRY: And you predesignated, and
25 your predesignation list says "Affidavit," in the

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1 singular, "of" David "Wilson." It doesn't define
2 what case it's in.

3 MS. WIVELL: Yes, and --

4 MS. McGARRY: And I asked you to explain
5 what case that affidavit was in and you wouldn't tell
6 me. So you've now given him an affidavit and I asked
7 you if this is the affidavit and you still won't tell
8 me, so I'm telling you that you said you were going
9 to ask about one affidavit so this will be the one
10 affidavit.

11 BY MS. WIVELL:

12 Q. Now, sir --

13 MS. McGARRY: And the authority is the rule
14 of Judge -- the order of Judge Fitzpatrick.

15 MS. WIVELL: Excuse me, could you not
16 interrupt me, Counsel. You've done it over and over
17 and over again, and I've been patient. I would just
18 appreciate if you would just please not interrupt me
19 while I'm talking.

20 Q. Sir, turning your attention to page three, this
21 affidavit refers to B.A.T. Industries' financial
22 investments in biotechnology agribusiness ventures;
23 correct?

24 A. Yes.

25 Q. All right. Have we now talked about what you

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1 are referring to here in this affidavit?

2 A. Yes. Yes, we have. I mean, this is the -- this
3 is essentially -- what I've been talking about is
4 essentially what is contained within here, yes.

5 Q. All right. Does B.A.T. Industries have any
6 further information on this business venture or these
7 business ventures that you have not told us about
8 here today?

9 A. I don't believe so. I -- I -- I -- I'm not
10 going to be categoric about it, but I certainly -- I
11 don't -- personally I do not believe so, but I --
12 I -- I can't say more than that.

13 Q. Now, sir, where did you get the information for
14 this affidavit?

15 A. This information was supplied to me following a
16 thorough review of documents which I believe had
17 become -- become available during the course of
18 document production in connection with the U.S.
19 litigation, when it was discovered that in fact
20 despite my earlier affidavits, there -- there had
21 been some investments in -- you know, in -- in
22 this -- in this field, and I think my earlier
23 affidavit, while not in fact wrong, may have created
24 a -- you know, a misimpression. And the purpose of
25 swearing this affidavit, as I recall, was to correct

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1 any mis -- misimpression.

2 Q. Now the affidavit that you filed in The State of
3 Minnesota case did not reference this biotechnology
4 agribusiness ventures, did it?

5 A. I believe that to be correct, yes. You're --
6 you're -- what you're saying is -- is correct, and
7 can I just go further and say that I believe -- I
8 believe that subsequently when this affidavit, which
9 was filed in, as you said, Florida -- when this
10 affidavit was formed by me, I believe I'm correct in
11 saying that my counsel brought this to the attention
12 of plaintiffs in the Minnesota action so that you
13 were put on notice that to the extent that my earlier
14 statement had -- my earlier affidavit had not dealt
15 with this matter, that I was filing -- I had filed a
16 supplemental affidavit in Florida and this was
17 pertinent to what I had also said in Minnesota.

18 Q. Have you filed a supplemental affidavit in
19 Minnesota?

20 A. I think beyond -- as I've just said, beyond the
21 fact that this affidavit was given to plaintiffs to
22 inform them of the position, I do not think I have
23 actually filed a supplemental affidavit in Minnesota,
24 but I -- I -- I think that -- I -- I think -- I think
25 that's -- that's the case.

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1 Q. All right. Now it says at the bottom of this
2 page "In 1988, B.A.T Industries relinquished its
3 interest in one of these ventures" Which
4 venture did it relinquish its interest in?

5 A. I believe that is a reference to the interest in
6 the Twyford venture.

7 Q. Did it sell its interest?

8 A. I don't know. I don't know actually that it
9 sold its interest. It simply ceased to make any
10 further investment in that company. I -- I can't
11 recall specifically as I sit here whether the
12 investment consisted of a share holding or whether
13 B.A.T. Industries just -- I think B.A.T. Industries
14 made cash contributions to Twyford and Twyford
15 carried on business as a biotechnology company, and I
16 believe B.A.T. Industries just simply severed its
17 connection with -- with Twyford. And I think, as it
18 says here, that the -- at the time that that
19 happened, Twyford's laboratory, biotechnology
20 laboratory, was transferred to -- to BATCO.

21 Q. And what happened to the NPI research joint
22 venture?

23 A. I -- I'm -- at the moment I'm -- I'm sorry, I --
24 I -- I just don't know. I think the -- I think
25 the -- my -- I said I don't know. I -- my

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1 recollection is that the -- the research didn't
2 progress. The -- the -- the research that the joint
3 venture was conducting in South America didn't
4 progress to a stage where it presented anything that
5 was going to be of any use in terms of commercial
6 exploitation, and the -- I think the -- essentially
7 the venture just simply ceased to have any -- I mean,
8 I just think, you know, B.A.T. just didn't -- didn't,
9 you know, pursue its interest any further, but I --
10 I -- I'm not sure about the absolute specifics, but
11 I -- that's what I understand.

12 Q. Is that joint venture still ongoing?

13 A. I -- my recollection is that B.A.T. Industries
14 had written off any interest in that joint venture
15 some years ago.

16 Q. Now, sir, B.A.T. Industries has funded research
17 on the subject of smoking and health, hasn't it?

18 A. B.A.T. Industries has funded research on the
19 subject of smoking and health? I would have expected
20 subsidiaries of B.A.T. Industries to have funded
21 research on the subject of smoking and health. I'm
22 not personally aware of any research on smoking and
23 health that B.A.T. Industries P.L.C. itself has
24 funded.

25 (Plaintiffs' Exhibit 646 was marked

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1 for identification.)

2 BY MS. WIVELL:

3 Q. Sir, showing you what's been marked as

4 Plaintiffs' Exhibit 646, this is a document Bates

5 numbered 109068035; correct?

6 A. Correct.

7 Q. It's entitled "1987 BATUKE Work Programme:

8 Project Areas Attributed to BAT Industries"; right?

9 A. It is so headed, yes.

10 Q. Have you seen this document before, sir?

11 A. Yes, I have.

12 Q. All right. What was the context in which you

13 saw this document previously?

14 A. I was shown this document by counsel in the

15 course of preparation for my deposition.

16 Q. All right. This document shows down the left

17 side various product research projects; right?

18 A. It shows a number of matters which are -- appear

19 to have the heading, yes, "Product Research," yes.

20 Q. And then on the side there are three columns;

21 right?

22 A. Yes, there are some boxes with three columns,

23 yes.

24 Q. Now at the top of the first two boxes on the

25 left is the heading "Proposed Project Funding"?

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1 A. Yes, that's right.

2 Q. And then it says "BAT Industries" at the head of
3 one column and then "BATCo" at the head of the
4 second; correct?

5 A. That's what it says, yes.

6 Q. Was B.A.T. -- I'm sorry.

7 Did B.A.T. Industries pay the funding of the
8 projects that are listed under the heading "BAT
9 Industries"?

10 A. I have no knowledge as to whether they did or
11 didn't, but my suspicion is that they didn't because
12 B.A.T. Industries is not involved in, you know,
13 research projects, scientific research projects or
14 projects of this sort itself. It would be done by
15 the tobacco companies, and as you yourself noted, the
16 document is -- or the columns are headed "Proposed
17 Project Funding." This was clearly a proposal, a
18 draft of some sort. To whom it was submitted and
19 to -- by -- whether it was ever agreed to, I have
20 absolutely no knowledge.

21 Q. I'm going to move to strike the portion of the
22 answer after the phrase "whether they did or
23 didn't."

24 Now, sir, you don't know as you sit here right
25 now whether the -- B.A.T. Industries paid the funding

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1 for the projects that appear under its name in this
2 column; isn't that true?

3 MS. McGARRY: I object to the form of the
4 question, mischaracterizes the document.

5 A. Could you reread the question for me, please.

6 Q. Certainly. As you sit here today, you don't
7 know one way or the other whether B.A.T. Industries
8 paid for the -- paid the funding for the projects
9 which are listed under its name in Exhibit 464?

10 A. As I sit here today, I have no knowledge as --
11 as to whether or not B.A.T. Industries funded any of
12 these projects which are specified in the list of
13 product research here on this document.

14 THE REPORTER: It's Exhibit 646.

15 MS. WIVELL: Thank you. All right. Let me
16 rephrase the question since I appear to be dyslexic
17 toward the end of these four days.

18 MS. McGARRY: Well we're all getting
19 tired.

20 Q. As you sit here today, you don't know one way or
21 the other whether B.A.T. Industries paid or funded
22 the projects that are listed under its name in
23 Exhibit 646, do you, sir?

24 MS. McGARRY: Object to the form of the
25 question.

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1 A. As I sit here today, I have no knowledge as to
2 whether the -- B.A.T. Industries funded the projects
3 which are -- sorry, the -- yes, the -- the -- the
4 projects which are specified under the heading --
5 heading "Product Research" on this page of this
6 document.

7 THE REPORTER: Off the record, please.

8 (Recess taken.)

9 (Record read by the court reporter
10 off the record.)

11 A. And I make the same point in connection with the
12 other projects which are referred to on pages two and
13 three of the document so there's no misunderstanding
14 that the answer I've given in respect to page one
15 also applies in respect of the other pages of the
16 document.

17 Q. Well when you saw this document before the
18 deposition, did you do anything to try and determine
19 whether B.A.T. Industries paid or funded the projects
20 that are listed under its name in this document?

21 A. No, I didn't.

22 Q. If you wanted to determine whether or not B.A.T.
23 Industries funded those proposals that are listed
24 under its name in Exhibit 646, how would you go about
25 answering that question?

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1 A. Well I think it would be probably a
2 several-stage project. I think in the first instance
3 I would seek to find out who produced this proposal,
4 whether the proposal -- proposal was ever referred to
5 B.A.T. Industries, and if it was not referred to
6 B.A.T. Industries, that would obviously be indicative
7 that B.A.T. Industries did not fund these projects.
8 And I would also request an examination of the
9 accounting records of B.A.T. Industries for 1987
10 possibly to see whether there was any payments made
11 in connection with these projects.

12 That's, I suppose, the -- the -- the approach I
13 would take.

14 Q. Does B.A.T. Industries have an accountant?

15 A. B.A.T. Industries, yeah, yes, does have an
16 accountant.

17 Q. Who is that?

18 A. The -- the chief accountant for B.A.T.
19 Industries is -- is David Potter.

20 Q. Did you make an attempt to find out from
21 Mr. Potter whether or not B.A.T. Industries funded
22 the proposals that are listed here?

23 MS. McGARRY: Objection, asked and
24 answered.

25 A. I did not make a -- an inquiry of Mr. Potter as

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1 to whether B.A.T. Industries funded these projects
2 specified in this document.

3 Q. Sir, we have talked earlier in this deposition
4 about a period of time beginning approximately April
5 of 1990 when Brown & Williamson began reporting
6 directly to B.A.T. Industries. Do you recall that,
7 sir?

8 A. Yes, ma'am.

9 Q. All right. And during that time -- or sorry,
10 strike that.

11 After that time period, B&W declared incremental
12 profits directly to B.A.T. Industries; isn't that
13 true?

14 A. Could you please clarify. I'm not sure what you
15 mean by "incremental profits."

16 Q. Well during the -- strike that.

17 In the time period after April of 1990, Brown &
18 Williamson declared profits directly to B.A.T.
19 Industries; right?

20 MS. McGARRY: Objection, assumes facts not
21 in evidence. You may answer.

22 A. "Declared profits" is -- is a -- a -- an
23 expression with -- with which I'm not familiar.
24 Profit is profit. Profit is a -- a -- a conclusion
25 reached from the application of accounting

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1 principles. It's -- in basic terms, it is the
2 product of gross revenue minus expenditure, and that
3 is usually what results in profits. So profit is, as
4 I say, the conclusion from those factors.

5 If you are referring to or suggesting that in
6 some way B&W declared a dividend directly to B.A.T.
7 Industries, I think that cannot be the case because
8 the parent company of Brown & Williamson after 1990
9 was a company called BATUS Tobacco Services Inc. and
10 the parent company of BATUS Tobacco Services Inc. was
11 BATUS Holdings, and I -- I cannot see how Brown &
12 Williamson could have paid a dividend directly to
13 B.A.T. Industries.

14 (Plaintiffs' Exhibit 647 was marked
15 for identification.)

16 BY MS. WIVELL:

17 Q. Sir, showing you what's been marked as
18 Plaintiffs' Exhibit 647, this is a document which
19 begins with the Bates number 500038508; right?

20 A. Correct.

21 Q. It is a document headed "SECRET, MINUTES OF
22 MEETING, MILLBANK - WEDNESDAY 2ND OCTOBER 1991, FAR
23 EAST RE-ORGANISATION"; right?

24 A. That's correct.

25 Q. Would you take a look at point number four and

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1 read it to yourself.

2 (Witness reviews Plaintiffs' Exhibit 647.)

3 A. I'm going to ask you, please, to let me read the
4 whole document. I'm not going to answer questions on
5 one paragraph out of a context which I'm not aware
6 of. I haven't seen this document before.

7 Q. All right, go ahead.

8 (Witness continues reviewing Plaintiffs'
9 Exhibit 647.)

10 Q. Sir, you've now taken the time to read
11 Exhibit 647.

12 A. Yes, I have, yes.

13 Q. All right. This document concerns a meeting at
14 which five individuals were present; right?

15 A. Five individuals are recorded as having been
16 present, yes.

17 Q. The first is Mr. Bramley?

18 A. Yes.

19 Q. And for whom does he work?

20 A. In 1991 Mr. Bramley was the chairman and
21 essentially chief executive of British-American
22 Tobacco Company, BATCO, and he was also a member of
23 the board of B.A.T. Industries.

24 Q. And another person who was present at this
25 meeting was Mr. Adams.

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- 1 A. Yes.
- 2 Q. At the time of the meeting, what position did
- 3 Mr. Adams have?
- 4 A. Mr. Adams was a director of BATCO.
- 5 Q. And also present was Mr. Cunningham; right?
- 6 A. Yes.
- 7 Q. What position did he have at the time?
- 8 A. I do not know. It's not a name I'm familiar
- 9 with at all.
- 10 Q. Also present was Mr. Hardman.
- 11 A. Yes.
- 12 Q. What position did he have at the time?
- 13 A. I believe at that time Mr. Hardman was the tax
- 14 manager for BATCO, I believe, but I -- I'm not
- 15 absolutely convinced. I think he was.
- 16 Q. And finally present was Mr. Leach; right?
- 17 A. Yes.
- 18 Q. What position did he have at the time?
- 19 A. Again it's not a name I'm at all familiar with.
- 20 Q. Now it says in the first paragraph that "The
- 21 purpose of the meeting was a debriefing following the
- 22 presentation to Sir Patrick Sheehy by BDB/PA of the
- 23 proposed Far East re-organisation"; right?
- 24 A. Yes, that's what it says.
- 25 Q. To what does "the Far East re-organisation"

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1 mean, refer?

2 A. I don't know what it means in this context, I'm
3 sorry.

4 Q. There is reference here at point four that "It
5 was agreed that B & W should invoice product through
6 the Far East Unit of BATUKE but incremental profits
7 should be declared directly up to BAT Industries";
8 correct?

9 A. That is what paragraph four says, yes.

10 Q. Sir, were any of the individuals listed at this
11 meeting Brown & Williamson employees?

12 A. Well I have previously testified that I do not
13 know who Mr. Cunningham and Mr. Leach are, so -- but
14 I -- so I have no knowledge as to whom these people
15 are, and I have also testified the associations of
16 Mr. Bramley, Mr. Adams and Mr. Hardman.

17 Q. Sir, are you aware of the discussions to which
18 this document refers?

19 A. No, I'm not aware of the discussions to which
20 this document refers.

21 Q. Do you have in -- any information that point
22 number four -- strike that.

23 Well did Brown & Williamson invoice product
24 through the Far East Unit of BATUKE and then declare
25 profits directly to B.A.T. Industries?

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1 A. I do not know whether Brown & Williamson
2 invoiced product through the Far East Unit of
3 BATUKE. I am -- as I've said before, the only way in
4 which I can understand that Brown & Williamson could
5 make payments to B.A.T. Industries is by way of a
6 dividend declared to Brown & Williamson's parent
7 company, and if Brown & Williamson's parent company
8 should then decide to pay a dividend to its parent
9 company, who in turn should decide to pay a dividend
10 to B.A.T. Industries, that would be the way things
11 would be done. And that is in fact the only way, as
12 I understand it, things can be done.

13 So I am not aware of any incremental profits,
14 whatever that phrase should mean, being declared
15 directly up to B.A.T. Industries, and it does in fact
16 use the word "declared directly," which to me doesn't
17 have any particular meaning. It doesn't say profits
18 would be paid to B.A.T. Industries. It says "should
19 be declared directly up to BAT Industries." It's
20 ambiguous, unclear, and I simply do not know what it
21 means.

22 And I also want to make the point that this --
23 this is a -- purports to be a minutes of a meeting
24 held at Millbank in October 1991. Millbank is the
25 headquarters building of -- or was the headquarters

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1 building of BATCO, and I've -- and I've identified at
2 least three of the individuals present at the meeting
3 as being employees, representatives of BATCO.

4 Q. If you --

5 MS. McGARRY: Martha, can I ask if you have
6 a lot more. We have -- we've hit ten hours by my
7 records. I'm not going to be a stickler if you've
8 got a few minutes, but --

9 MS. WIVELL: Well not --

10 MS. McGARRY: -- just according to what's
11 on the screen.

12 MS. WIVELL: What's on the screen of course
13 includes colloquy, so it's my understanding that at
14 lunchtime we were -- we were approximately eight
15 hours.

16 THE REPORTER: Can we go off the record?

17 MS. WIVELL: Yes.

18 THE REPORTER: Off the record, please.

19 (Recess taken.)

20 BY MS. WIVELL:

21 Q. Sir, B.A.T. Industries required Brown &
22 Williamson to provide it with financial projections,
23 didn't it?

24 MS. McGARRY: Object to the form. You may
25 answer.

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1 A. I gave some testimony yesterday that it is the
2 practice of B.A.T. Industries to issue what are
3 called guidelines to its operating companies, its
4 major operating companies, and I also gave testimony
5 that the purpose of these guidelines is essentially
6 to provoke, if you like, a discussion with the
7 relevant operating group about its projected
8 performance, its plans for the forthcoming period,
9 and I said that the guidelines led to a document
10 which was called a preview and which is presented to
11 B.A.T. Industries and which itself is then discussed
12 with B.A.T. Industries and that following those
13 discussions, which are, I think I said yesterday, in
14 the form of a negotiation as much as anything else,
15 the relevant operating company then goes back and
16 produces a company plan based on those discussions
17 and that in the past the company plans have been
18 five, sometimes I think more recently three years,
19 possibly even ten-year plans at one stage, but
20 certainly five- and more recently three-year plans,
21 and that those plans are then combined to produce
22 a -- an overall plan, which is presented to the board
23 of B.A.T. Industries and which B.A.T. Industries will
24 either endorse or not endorse and hopefully will
25 endorse.

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1 And I think in that context I think that's the
2 answer to the question you're -- you've raised.

3 MS. McGARRY: Thank you.

4 (Plaintiffs' Exhibit 648 was marked
5 for identification.)

6 BY MS. WIVELL:

7 Q. Sir, showing you what's been marked as
8 Exhibit 648, this is a document which begins with
9 Bates number 201761526; right?

10 A. Yes, it does, yes.

11 Q. Exhibit 648 is "B.A.T Industries' Guidelines:
12 July 1992," which it sent to Brown & Williamson;
13 correct?

14 A. That appears to be the case, yes.

15 Q. Now this is an example of the guidelines that
16 you were referring to in your answer above; right?

17 A. Yes, I believe this would be an example of the
18 guidelines, yes.

19 Q. All right. Now --

20 A. I -- sorry, I hadn't actually quite completed --
21 I'm sorry about that, if I misled you. I hadn't
22 actually completed my answer. I say I believe this
23 would be an example of those guidelines. The
24 document itself predates my appointment as the
25 secretary to the company, and therefore I didn't

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1 have -- wouldn't have specific knowledge of this
2 particular document, but I think your conclusion is
3 probably fair.

4 Q. All right. It says here "The attached
5 Guidelines" out -- "outline the strategic priorities
6 and financial" object -- "objectives which have been
7 agreed for Brown & Williamson ..."; right?

8 A. That is what it says, yes.

9 Q. All right. Let me understand the process.
10 Were these guidelines agreed with Brown &
11 Williamson or were they established for Brown &
12 Williamson?

13 A. I -- I can only answer from what the document
14 says. The document does indicate a degree of a
15 consensual approach. It does talk about agreement,
16 but I -- I can only say what the words of the
17 document actually say.

18 The -- the usual process, as I think I mentioned
19 earlier, was that B.A.T. Industries would produce
20 guidelines, which would then be submitted to the
21 operating companies. I don't for one minute suppose
22 those guidelines are produced in isolation from the
23 operating company. It would be somewhat artificial
24 if the holding company simply dreamt up its own
25 guidelines and presented them as a -- you know, to

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1 the operations without any previous discussion or
2 communication.

3 Q. It --

4 A. I -- I don't know.

5 Q. I'm sorry.

6 It refers to B.A.T.'s own objectives, doesn't
7 it, sir?

8 A. It says at paragraph one "The guidelines are
9 consistent with B.A.T Industries' own objectives to,"
10 and then it specifies some objectives.

11 May I say if you're going to ask me questions on
12 this document, which I have not previously seen, I
13 would like to read -- read the document. I think
14 it's only a page and a half.

15 Q. All right. Well let me just ask you one more
16 question that is unrelated to the document first of
17 all.

18 Before this kind of guideline is sent to Brown &
19 Williamson, these objectives that are referred to are
20 established by B.A.T. Industries; isn't that true?

21 A. B.A.T. Industries would have objectives, have
22 its own objectives as a -- as a company. It has a
23 board of directors who meet to discuss strategy and
24 where the company believes it's in the best interests
25 of its shareholders to invest its -- it's public

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1 stockholders, sorry, explain the term for you --
2 where it's best to invest the money of its public
3 stockholders and which types of investments.

4 Of course any company has its own guidelines,
5 its own strategies, its own -- its own -- its own way
6 of looking at things.

7 Q. So would it be fair to say that the B.A.T.
8 objectives are those which it has established in
9 order to provide the best return for its
10 shareholders?

11 A. I think the only way I can answer that is to say
12 I think it would be highly unlikely that B.A.T.
13 Industries would produce its own -- would produce
14 objectives for itself which were not developed on the
15 basis of im -- of achieving the best returns for its
16 shareholders.

17 Q. All right. Why don't you take a moment and read
18 the document, and then we'll talk about it.

19 (Witness reviews Plaintiffs' Exhibit 648.)

20 Q. You've read the document, sir?

21 A. Yes, I have.

22 Q. Now, the guidelines that we were talking about
23 earlier that B.A.T. established are listed as -- as
24 points (a) and (b); right?

25 A. Sorry, can you just read back the question to

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1 me.

2 Q. Certainly.

3 A. I don't think I understood that.

4 Q. The guidelines that we were talking about just a
5 moment or two ago that B.A.T. established are listed
6 at points (a) and (b) on the first page.

7 A. You're talking about the guidelines B.A.T.
8 established for itself?

9 Q. Fair enough. Bad question.

10 A. No, I'm -- I'm sorry, I'm -- yes.

11 Q. No, no, you've made a valid point, and I'm going
12 to withdraw the question and rephrase it.

13 The document concerns B.A.T. Industries'
14 guidelines overall which it established for Brown &
15 Williamson; right?

16 MS. McGARRY: Objection.

17 A. No. In fact, what this document is -- I'm glad
18 you've raised the question because I think I can help
19 you. What this document is is a document which
20 provides merely an introduction to the 1992
21 guidelines which B.A.T. Industries submitted to
22 Brown & Williamson. In fact, it says in the first
23 paragraph "The attached Guidelines" What the
24 document goes on to say is that the attached -- "The
25 guidelines"; i.e., the attached guidelines -- that

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1 must be a reference to the attached guidelines --
2 "are consistent with B.A.T Industries' own
3 objectives"; i.e., the objectives of B.A.T.
4 Industries.

5 The objectives which the board of B.A.T.
6 Industries presumably has set for itself, set for
7 B.A.T. Industries, are not inconsistent with the
8 guidelines for Brown & Williamson which are attached
9 to this -- or which the document says are attached to
10 this document, but which are in fact not included as
11 part of the exhibit.

12 Q. So this actually --

13 Exhibit 648 is not actually the guidelines. It
14 was just the cover letter that was sent along with
15 the guidelines; is that right?

16 A. This document, from its face, does not appear to
17 be the guidelines to Brown & Williamson because it
18 says in the very first paragraph "The attached
19 Guidelines" In other words, there appears to be
20 or there appears -- it appears to me there should
21 have been an attachment to this document, but that
22 attachment, as I say, is not included as part of your
23 Exhibit 648, which contains only two pages, having
24 the Bates numbers 201761526 and 201761527.

25 Q. Exhibit 648 was a cover memo which set out

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1 generally B.A.T.'s own objectives; would that be fair
2 to say?

3 A. I don't want to give a characterization to -- to
4 the documentation beyond what it actually says, but
5 it certainly does indicate what B.A.T. Industries'
6 own objectives for B.A.T. Industries were or
7 certainly what some of them were at any rate, I
8 think, by the reference in section on paragraph one
9 to paragraphs (a) and (b).

10 (Plaintiffs' Exhibit 649 was marked
11 for identification.)

12 BY MS. WIVELL:

13 Q. Sir, showing you what's been marked as
14 Plaintiffs' Exhibit 649, the first page begins with
15 Bates number 191002374; correct?

16 A. Yes, it does.

17 Q. And this is a letter from Ulrich Herter to
18 Mr. Sandefur entitled "GUIDELINES FOR BROWN &
19 WILLIAMSON 1994"; right?

20 A. This -- well it's -- it's not signed by
21 Mr. Herter, but it looks as though it could be a copy
22 of a letter from Mr. Herter to Mr. Sandefur bearing
23 that date, yes.

24 Q. All right. Who was --
25 Who is Mr. Herter?

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1 A. Mr. Herter is a member of the board of B.A.T.
2 Industries and he is also at the present time the
3 managing director of British-American Tobacco
4 Holdings Limited, the company which I explained, I
5 think, earlier is the company formerly known as
6 Staines Investments Limited, which was incorporated
7 in 1932.

8 Q. All right. And which took over the general
9 operations of the tobacco group businesses within
10 B.A.T. Industries as of approximately January 1st,
11 1996; right?

12 MS. McGARRY: Objection, misstates the
13 prior testimony.

14 A. Thank you. In fact, with respect, I would have
15 said that that is a misstatement. I didn't say it
16 took over the -- the -- the responsibility, the
17 management of the operations. I think my testimony
18 was that it -- it took over strategic -- it took over
19 responsibility for the strategic direction of
20 achieving the vision of regaining the number-one
21 position as the -- in the tobacco business.

22 Q. Now, sir, attached to this document,
23 Exhibit 649, are guidelines for Brown & Williamson,
24 July 1994; correct?

25 A. Yes. That appears to be the case, yes.

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1 Q. All right. Would you take a moment and read
2 that document over.

3 A. Okay.

4 (Witness reviews Plaintiffs' Exhibit 649.)

5 A. Can I -- I'm still reading the document. Can I
6 just make a point that there are some sections of
7 this document that I in fact cannot read at all;
8 they're illegible. On page two of the guidelines,
9 paragraph eight, I cannot read the second sentence at
10 all.

11 Q. Sir, I promise you since I can't read them
12 either, I won't be asking you about them.

13 A. That's -- thank you.

14 (Witness continues reviewing Plaintiffs'
15 Exhibit 649.)

16 Q. Sir, you've now read the document; right?

17 A. Yes, I have.

18 Q. B.A.T. Industries established certain priorities
19 that are set forth in the guidelines that begin on
20 the second page of Exhibit 649.

21 MS. McGARRY: Objection.

22 A. I think the document says what the document
23 says. I -- it says at paragraph one "The first
24 priority for Brown & Williamson is to assist B.A.T
25 Industries," et cetera.

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1 Q. And it goes on to say "... in its objective to
2 be the premier Tobacco company"; correct?

3 A. It does say that.

4 Q. All right.

5 A. It also goes on to say "This will be achieved by
6 growing profitable volume and value share in the end
7 markets for which it is responsible" -- I think
8 that's a reference to Brown & Williamson -- "and in
9 particular, growing share of premium/high price
10 segment International Brands."

11 Q. So it would be correct to say that the first
12 priority that was established by B.A.T. Industries
13 for Brown & Williamson was to assist B.A.T.
14 Industries in its objective to be the premier tobacco
15 company; correct?

16 MS. McGARRY: Objection. Sorry.
17 Objection, mischaracterizes the document and the
18 witness's prior testimony concerning guidelines.

19 A. Could you read the question back to me. I beg
20 your pardon.

21 Q. Yes. It would be correct to say that the first
22 priority that was established by B.A.T. Industries
23 for Brown & Williamson was to assist -- I'm sorry,
24 strike that.

25 It would be correct to say that the first

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1 priority that was established by B.A.T. Industries
2 was for Brown & Williamson to assist B.A.T.
3 Industries in its objective to be the premier tobacco
4 company; correct?

5 MS. McGARRY: Same objections.

6 A. I -- it cannot -- it cannot be the case that it
7 was intended to make B.A.T. Industries the -- B.A.T.
8 Industries P.L.C. the premier tobacco company because
9 I've already testified -- and I think I've testified
10 to this on more occasions than I can now remember --
11 that B.A.T. Industries itself is not a tobacco
12 company. B.A.T. Industries is an investment holding
13 company that holds shares in companies that
14 manufacture and market tobacco products.

15 And I think the reference is intended to mean --
16 in fact, I am sure the reference is intended to mean
17 that the group of companies in the tobacco business
18 in which B.A.T. Industries invests collectively will
19 become the premier tobacco company, and that is --
20 that is in fact consistent with the testimony I gave
21 this morning concerning the vision to regain the
22 number-one position, which was one of the driving
23 forces in connection with Project Battalion and with
24 the reconstitution of the board of British-American
25 Tobacco Holdings as a body charged with strategic

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1 responsibility for seeing through that vision.

2 Q. Sir, the document was written by a B.A.T.

3 Industries' employee, wasn't it, sir?

4 MS. McGARRY: Objection, inconsistent with
5 the prior testimony.

6 MS. WIVELL: Well let me rephrase it.

7 Q. This document was sent by a member of the board
8 of B.A.T. Industries to Tom Sandefur, chairman of
9 Brown & Williamson, wasn't it, sir?

10 A. This document appears --

11 As I said earlier, this thing is not signed, but
12 I have no reason to doubt that this document was
13 authored by someone at B.A.T. Industries and that it
14 was sent by B.A.T. Industries to Mr. Sandefur, who
15 was at that time the chairman of Brown & Williamson
16 Tobacco Corporation.

17 Q. And --

18 And in fact, sir, at the top of the page we've
19 just been looking at, it shows that this document was
20 faxed from B.A.T. Finance on August 8th, 1994; isn't
21 that true, sir?

22 A. It looks like the sort of heading one gets from
23 a fax machine. I can't confirm or deny it, but it
24 certainly looks like that.

25 And -- and while I'm answering that question,

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1 I'd just like to go -- go back because, although you
2 hadn't appreciated it, I hadn't actually finished my
3 previous answer. I wanted to make the point in
4 connection with the document that, as is quite clear
5 from the document, from the guidelines and
6 particularly I think from Mr. Herter's letter to
7 Tommy Sandefur, this was -- these -- these are in
8 fact revised guidelines and -- and clearly there had
9 been discussions between Mr. Sandefur and, I imagine,
10 Mr. Herter because it talks about "As you are aware
11 the draft Guidelines recently sent to you included a
12 revised 8 percent Trading Profit Growth Target." And
13 he's now saying, "I attached a revised version which
14 reflects further changes in guidelines" and in fact
15 says that the operating cash surplus growth target
16 will in fact be reduced. So whereas before the
17 guideline had suggested that Brown & Williamson
18 should -- should produce, say, operating cash surplus
19 growth target -- or should achieve an operating
20 cash -- cash surplus growth target of 12 percent,
21 this was being revised downwards to 10 percent. And
22 the document also reflects that the previous
23 guideline of a growth in net turnover of 6 percent
24 was now being reduced down to 5 percent.

25 And I think it's quite consistent with

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1 discussions having taken place between Mr. Sandefur
2 and Mr. Herter in the spirit of discussions which I
3 think I've testified to is the usual way these things
4 are done.

5 Q. Sir, have you ever talked to Mr. Herter about
6 this document?

7 A. I have not talked to Mr. Herter about this
8 document, no.

9 Q. Have you talked to Mr. Sandefur about this
10 document?

11 A. I have not talked to Mr. Sandefur about this
12 document. I think you may know Mr. Sandefur is now
13 deceased.

14 Q. Yes, I understand that. Have you talked to
15 anyone about this document, sir?

16 A. Yes, I believe I have talked to someone about
17 this document.

18 Q. Who was that?

19 A. I believe I spoke to Hilary Barton about this
20 document.

21 Q. Hilary Barton authored this document, didn't
22 she, sir?

23 A. I am not entirely sure that Hilary Barton
24 authored this document, but the document bears at the
25 end of the document on page three; that is, the page

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1 with the Bates number 191002377, the initials

2 "HCB/DWS," and "HCB" I take to be a reference to

3 Hilary Barton.

4 Q. Now, sir, what this document says clearly is,

5 quote, "The first priority for Brown & Williamson is

6 to assist B.A.T Industries in its objective to be the

7 premier Tobacco company," doesn't it, sir?

8 A. I have testified already that that is what the

9 document says, but that is not what the document

10 meant in my understanding.

11 Q. Sir, considering that you neither talked to

12 Mr. Herter nor Mr. Sandefur about this document,

13 wouldn't you agree that you truly do not know what

14 went on between them at the time this document was

15 sent?

16 MS. McGARRY: Then why are you asking the

17 witness questions about a document if you don't

18 accept his interpretation of it? We will stipulate

19 that the first sentence of paragraph one was

20 correctly read by you.

21 Q. Do you have my question in mind, sir?

22 A. I'm sorry, could you repeat your question,

23 please.

24 Q. Yes. Considering that you neither talked to

25 Mr. Herter or to Mr. Sandefurd about this document,

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1 wouldn't you agree that you truly do not know what
2 went on between them at the time this document was
3 sent?

4 A. I have no knowledge of what conversations were
5 held between Mr. Herter and Mr. Sandefur other than
6 is as is recorded in the doc -- in these documents.

7 Q. Now, sir, if we turn --

8 MS. McGARRY: It's Sandefur, by the way.

9 THE WITNESS: Sorry?

10 MS. McGARRY: I said "Sandefur, by the
11 way," not Sandefurd.

12 Q. Sir, if we turn to the page that ends with Bates
13 number 376, we see additional specific priorities
14 which have been set out; correct?

15 A. I see a heading which says "Specific
16 Priorities."

17 Q. These specific priorities would have been
18 established by B.A.T. Industries for Brown &
19 Williamson; isn't that true, sir?

20 MS. McGARRY: Objection, mischaracterizes
21 the witness's prior testimony about guidelines.

22 A. I've given testimony I think again on this
23 subject of guidelines more times than I can now
24 remember, but I have already said that the -- this
25 guideline is not a definitive objective. What a

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1 guideline is, it is a proposal from the holding
2 company, the company that holds the investment, to
3 the operating company as to what the holding company
4 anticipates by way of performance from the operating
5 company, and it is a document which is intended to
6 provoke discussion, debate between the operating
7 company and the holding company. And I cannot add
8 any more to that answer.

9 Q. Now, sir, the specific priorities that are set
10 out here include one on smoking issues; correct?

11 A. Specific priorities 15, smoking issues.

12 Q. And it says "Brown & Williamson should work with
13 the rest of the US Tobacco industry to put across its
14 message and so achieve a more balanced public
15 perception"; correct?

16 A. That is what the document says.

17 Q. And, sir, that refers to getting across the
18 message that was established in the board policy on
19 smoking and health that we discussed earlier in this
20 deposition; isn't that true?

21 MS. McGARRY: Objection.

22 A. I'm sorry, could you read back the question,
23 please.

24 Q. Sir, that refers to getting across the message
25 that was established in the board policy on smoking

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1 and health that we discussed earlier in this
2 deposition; isn't that true?

3 A. I'm -- I don't really follow the question
4 because the -- the -- the board policy, if -- if --
5 by which if you're referring to the policy on legal
6 considerations of smoking and health, doesn't convey
7 a message as such. What it does is to convey the
8 position of the -- of B.A.T. Industries, of the -- of
9 the group, on the issue of causation. Essentially
10 that is what the document deals with, so I'm not sure
11 how this can be a reference to that, but frankly I
12 can't speculate as to what this reference is a
13 reference to. It's unclear to me. The document says
14 really what the document says.

15 Q. Now, sir, the next priority that is set forth
16 concerns the Kool brand of cigarettes; right?

17 A. That is right.

18 Q. And the estab -- the -- I'm sorry, strike that.

19 The priority that was listed there was "... to
20 switch the marketing focus of Kool to its franchise
21 and stabilize its share of the full revenue menthol
22 segment, so that its major contribution to profits
23 continues, to gain time to develop the profitability
24 of other brands, either new full revenue brands or
25 increased profit in VFM"; right?

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1 A. I -- I think that's right. Yes, I mean, yes, I
2 think you've read what it says. Yes, I think that's
3 right, yes.

4 Q. And isn't it a fact that this priority -- or by
5 this priority B.A.T. Industries is directing the
6 marketing focus of the Kool franchise of Brown &
7 Williamson?

8 MS. McGARRY: Objection, mischaracterizes
9 the witness's prior testimony on the document.

10 A. I think I testified in response to a question,
11 perhaps the last question or the question before
12 that, that the purpose of the guidelines is to
13 provoke a discussion, a debate with the operating
14 group about the performance of the operating group
15 for the forthcoming period. It is not a direction.
16 It doesn't mandate an operating group to do
17 anything.

18 It is simply intended to set out what B.A.T.
19 Industries as the company owning the investment
20 anticipates the operating company in question might
21 be able to achieve and is intended that the operating
22 company will enter into discussions with the parent
23 company to discuss its projected performance.

24 Q. Now, am I correct in understanding that as --
25 after the guidelines were sent to Brown & Williamson,

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1 Brown & Williamson would have developed a document
2 called a preview?

3 A. That would normally be the situation, yes.

4 Q. And then the preview would be sent back to
5 B.A.T. Industries for its review and approval or
6 disapproval; correct?

7 A. No, that's something of an abbreviation of what
8 actually happens. What happens is that the
9 guidelines, as I say, are sent to the operating
10 group. They are discussed. The operating group then
11 presents a preview, essentially a preview of its
12 plan, which is then considered at B.A.T. Industries,
13 and meetings are held between representatives of
14 B.A.T. Industries and the operating group at which
15 the preview is -- is discussed.

16 And following those discussions, the operating
17 group goes back and then produces a company plan
18 based on all those discussions and negotiations.
19 It's a sort of two-way process, if you like. It's --
20 you know, I think I mentioned earlier the consensual
21 approach, and this is really what this is -- this is
22 all about.

23 Q. But you would agree that in this process the
24 folks at B.A.T. Industries have a right to tell the
25 operating company; in this case, Brown & Williamson,

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1 "No, we don't agree with that. We want you to do it
2 this way"; right?

3 A. I think we need to be a bit more precise about
4 this. I've given, I think, quite considerable
5 testimony now which is to the effect that the holding
6 company, which is an investment company which owns
7 securities, owns the shares, the stock of operating
8 companies, does not give instructions to those
9 operating companies about the way in which those
10 companies carry on their day-to-day management, and
11 the reason for that is really quite simple.

12 While there are some people in the investment --
13 the investment holding company, in B.A.T. Industries,
14 who understand these businesses, a company which has
15 an employee force consisting of approximately a
16 hundred people cannot possibly manage the day-to-day
17 activities of its various operating companies around
18 the world, which number several hundred. It cannot
19 possibly make the thousands of daily operating
20 decisions which need to be made by any company in a
21 substantial way of business.

22 So I would dispute that the day-to-day
23 management decisions are directed by B.A.T.
24 Industries, but I would entirely agree that strategic
25 issues -- and one of these I have previously

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1 identified as the desire to make the tobacco
2 operations of B.A.T. Industries or the -- the
3 operations of the subsidiaries -- of the tobacco
4 subsidiaries of B.A.T. -- of B.A.T. Industries
5 collectively the number-one tobacco business in the
6 world -- these are clearly matters which are
7 appropriate for a holding -- a holding company to be
8 involved in and to even give some direction on.

9 THE WITNESS: Could -- could we please take
10 a -- a break at this stage?

11 MS. WIVELL: Certainly.

12 THE WITNESS: Thank you.

13 THE REPORTER: Off the record, please.

14 (Recess taken.)

15 (Plaintiffs' Exhibit 650 was marked
16 for identification.)

17 BY MS. WIVELL:

18 Q. Sir, you've had the opportunity to review
19 Exhibit 650?

20 A. Yes, I have.

21 Q. That is a document that begins with the Bates
22 number 201787454; right?

23 A. That's correct.

24 Q. And this document concerns a meeting that was
25 held with the Chairman's Policy Committee of B.A.T.

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1 Industries and Mr. Pritchard of Brown & Williamson to
2 discuss the preview of Brown & Williamson's plan for
3 the years 1992 through 1996; right?

4 A. Yes, it was a meeting between the CEC -- sorry,
5 CPC, Chairman's Policy Committee, and Mr. Pritchard,
6 well between two members of the Chairman's Policy
7 Committee. You'll see that Mr. Garraway, as the
8 minutes indicate, was unable to be present, but
9 Mr. Pritchard from Brown & Williamson was there
10 according to this minute.

11 Q. And the, quote, unquote, "Preview" that's
12 referred to in the first line of the document is the
13 preview that you've been discussing in your previous
14 answers?

15 A. I think that's a reasonable assumption, yes.

16 Q. All right. Now if we go down to point nine, it
17 reflects that "The CPC was not convinced that the
18 strategies proposed would give the optimum result for
19 the company," and it asked Brown & Williamson to do
20 certain things, didn't it?

21 A. Yes, that's correct. That's what the -- the
22 minute says, yes.

23 Q. All right. And the CPC asked Brown & Williamson
24 to provide an -- an analysis covering at least the
25 past three years for Kool showing the effect of

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1 increased marketing expenditure on market share;
2 right?

3 A. Yes, that's what it says.

4 Q. And the CPC also asked Brown & Williamson to
5 prepare alternative strategies involving
6 significantly lower levels of marketing expenditure;
7 right?

8 A. Paragraph 9(b) says that, and if I may go on,
9 paragraph 14 summarizing the position, therefore
10 summarizing the meeting, says, if I may quote, "The"
11 C -- this is the second sentence. "The CPC also
12 wished to discuss possible alternatives" -- I stress
13 the words "wished to discuss possible
14 alternatives" -- "which might" -- and I stress the
15 word "might" -- "which might include a milking
16 strategy and should certainly include a strategy
17 involving a significantly lower expenditure on
18 support for Kool."

19 The CPC wished to discuss possible
20 alternatives. I've referred in testimony on numerous
21 occasions to the process by which corporate plans are
22 produced, which essentially arises out of a
23 consensual process, a series of discussions which
24 take place between the holding company and between
25 the operations. And I've also mentioned the process

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1 by which guidelines are sent by B.A.T. Industries to
2 its operating companies, the process by which those
3 guidelines are then -- or then lead to the production
4 of a preview, which is then discussed between the
5 operating company and the CEC or, as it was in 1991,
6 the Chairman's Policy Committee.

7 And I think the minute 14 of these minutes, to
8 which I have referred, demonstrates quite properly
9 that the CEC wished to discuss or wished to
10 consider -- wished to discuss -- in fact, wished to
11 discuss with Brown & Williamson possible alternative
12 strategies. The CEC was not imposing any strategy on
13 Brown & Williamson. It was inviting Brown &
14 Williamson to propose alternatives for discussion.

15 Q. Well, sir, you left out a full sentence of that
16 summary, didn't you? That sentence says
17 "Summarising, the Chairman said that while they
18 appreciated the problems facing Brown & Williamson,
19 the CPC could not accept the preview without further
20 justification of the strategies." That's what it
21 says; isn't that true, sir?

22 A. The sentence says that, and the reason I left it
23 out was because it adds in fact nothing to the
24 previous answer I have given. "... the CPC could not
25 accept the preview without further justification of

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1 the strategies"; in other words, "Brown & Williamson,
2 would you please provide some further justification
3 for the strategies which you are proposing." And --

4 Q. And then it --

5 A. -- it doesn't say anything -- if I may continue
6 my answer, it doesn't say that the CPC is rejecting
7 the preview. It is simply asking for further
8 explanation, and that is what the document says and I
9 can't say any more than that.

10 Q. Because you haven't talked to anyone who
11 participated in this meeting about the document, can
12 you?

13 A. I haven't -- sorry, can you just read that back
14 to me, please.

15 Q. Sure. You have not talked to anyone who
16 participated in this meeting about this document?

17 A. I have had no discussion with those who are
18 listed as present at that particular meeting about
19 the discussions which took place and which are the
20 subject of this particular set of minutes, no.

21 Q. Now, in the next sentence of item 14 it says
22 "The CPC also wished to discuss possible
23 alternatives" that "might include a milking
24 strategy" What do you understand a milking
25 strategy to be?

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1 A. I do not understand a -- what a milking -- I --
2 let me put it like this: I do not know precisely
3 what is meant by "a milking strategy" there. I --
4 yeah, I -- I just don't know what it means in that
5 context.

6 Q. Now if we go on to the next note, point 15, it
7 says "The CPC would also be looking for better
8 substantiation of the forecast for exports and ... a
9 continuing commitment to strengthen the management in
10 order to be able to realise the full potential of the
11 strong portfolio of brands"; correct, sir?

12 A. Yes, that's what it says, yes.

13 Q. All right. And, sir, have you talked to anyone
14 about the meaning of that paragraph?

15 A. While I have not talked to anybody about the
16 meaning of that par -- if I may finish my answer,
17 please.

18 I have not talked to anybody -- while I have not
19 talked to anybody about the meaning of that
20 paragraph, the paragraph appears to me to speak for
21 itself. It asks the CEC -- or the CPC is asking
22 again for further substantiation of the forecastable
23 exports. Brown & Williamson manufactures and markets
24 tobacco products in the United States of America and
25 also exports its products overseas, and it is asking

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1 for further clarification of the forecasts in
2 connection with Brown & Williamson's export
3 business.

4 And the next part of the paragraph, which is
5 talking about a continuing commitment to strengthen
6 the management in -- in order to be able to realize
7 the full potential of the strong portfolio of brands,
8 is an entirely appropriate commitment for an
9 investment holding company to seek from the
10 management of one of its major operating businesses.
11 This is one of the functions of an investment holding
12 company, to ensure that there is proper management in
13 place to conduct the management of its business -- of
14 the businesses which it owns so that they continue to
15 be profitable, and that is simply what the -- what
16 the paragraph is referring to.

17 Q. Move to strike the nonresponsive portions of the
18 answer.

19 Sir, what is an EIP plan?

20 A. Sorry, what is a --

21 Q. EIP plan.

22 A. I believe the expression "EIP" refers to
23 "executive -- executive incentive plan."

24 Q. All right. B.A.T. Industries approves the
25 executive incentive plan for Brown & Williamson,

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1 doesn't it?

2 A. Can I -- well let me -- let -- let me put that
3 in its context. During the course of the last couple
4 of days, I think I have on several occasions talked
5 to you about the system by which B.A.T. Industries
6 deals with its operating companies, and we've talked
7 about the way in which the delegated authority
8 confers considerable autonomy on the various
9 operations -- on the various operating companies
10 which are owned by B.A.T. Industries.

11 And as part of that delegated authority system,
12 the operating companies of B.A.T. Industries are
13 essentially entitled to manage -- not only entitled,
14 I think are expected to manage their -- their own
15 affairs subject to certain major matters of
16 importance, which would be of importance to any owner
17 of the company. And one of the matters which is
18 reserved for a reference so that where the operating
19 company forms a -- takes a position on something, one
20 of the matters which it is required to refer to its
21 parent company is the question of the remuneration of
22 its senior executive officers, essentially the
23 members of its board and possibly some of the other
24 senior executives, but principally the members of its
25 board.

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1 Now part of the remuneration package of the
2 members of the board of Brown & Williamson would be
3 benefits they would receive under the executive
4 incentive plan, which is essentially a bonus plan
5 arrangement, and because, as I say, that forms part
6 of their remuneration, it is a requirement or was a
7 requirement in -- it certainly was a requirement in
8 1992 and -- and subsequent to 1992 for the levels of
9 bonus payments being made to the directors, the board
10 of directors of Brown & Williamson, a major operating
11 company owned by B.A.T. Industries, to be referred to
12 the CPC and/or CEC for discussion.

13 Q. I previously asked whether B.A.T. approves the
14 executive incentive plan for Brown & Williamson, and
15 you gave me a very long answer. With that answer in
16 mind, you're saying that B.A.T. does approve the
17 executive incentive plan for Brown & Williamson;
18 right?

19 A. I think what I'm -- I -- I mean, the -- the plan
20 as such I think has been in existence for -- for --
21 for -- for a long time. The directors of B. -- of
22 Brown & Williamson have been entitled to participate
23 in the executive incentive plan certainly I think for
24 as long as I have been at B.A.T. Industries and --
25 and probably much longer.

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1 So what I'm saying to you is that payments made
2 to the directors of Brown & Williamson pursuant to
3 the executive incentive plan will be approved at
4 B.A.T. Industries.

5 Q. All right. B.A.T. Industries also establishes
6 long-term performance objectives for Brown &
7 Williamson, doesn't it, sir?

8 A. Does or did?

9 Q. B.A.T. Industries did approve long-term
10 performance -- I'm sorry, strike that.

11 B.A.T. Industries did establish long-term
12 performance objectives for Brown & Williamson, didn't
13 it?

14 A. I believe that to be the case because I believe
15 that Brown & Williamson has a long-term performance
16 plan which also provides benefits, some remunerative
17 benefits, for the directors of Brown & Williamson,
18 and I'm going to go further on this and -- and talk a
19 little bit more about these plans and the performance
20 and the payments made for performance under these
21 plans.

22 I think it's important to bear in mind that when
23 criteria and objectives and guidelines are discussed
24 and plans are produced on the basis of guidelines and
25 remuneration is being assessed against performance,

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1 against guidelines, one has to remember that there is
2 a considerable degree of flexibility in these
3 matters. It would not be entirely reasonable for a
4 holding company to hold, for example, one of its
5 operating companies to the strict criteria which the
6 operating company and the holding company between
7 themselves -- may have agreed between themselves for
8 determining the basis upon which remuneration is
9 paid, and one can think of a number of external
10 circumstances which without any warning may have
11 affected the performance of a particular operating
12 group and therefore have impacted upon the
13 remuneration which will ultimately be paid to the
14 directors of that operating group if some flexibility
15 wasn't built into the system.

16 Q. But again, you've given me a very long answer to
17 that question, and keeping that answer in mind, it is
18 correct, isn't it, that B.A.T. approved the long-term
19 performance objectives for -- strike that. Let me
20 rephrase it.

21 You've given me a very long answer to that
22 question. Isn't it correct that B.A.T. Industries
23 approved the long-term performance objectives for
24 Brown & Williamson?

25 A. I -- I -- I believe that's -- that that's so,

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1 yes. I -- I can't remember a specific instance, but

2 I -- I believe that that may well be so.

3 (Plaintiffs' Exhibit 651 was marked

4 for identification.)

5 BY MS. WIVELL:

6 Q. Sir, showing you what's been marked as

7 Plaintiffs' Exhibit 651, this is a memo that begins

8 with Bates number 191001064; correct?

9 A. Yes, that's the case.

10 Q. All right. And the first page is a letter from

11 M. E. Chamberlayne to Tom Sandefur at Brown &

12 Williamson; correct?

13 A. Yes, it's a letter from Mark Chamberlayne to

14 Mr. Sandefur, the chairman of Brown & Williamson,

15 dated 14th March 1994.

16 Q. And that letter -- strike that.

17 What position did Mark Chamberlayne have at the

18 time this letter was written?

19 A. I believe in March 1994 Mr. Chamberlayne was the

20 head of group personnel services or something

21 similar -- very similar to that.

22 Q. For B.A.T. Industries?

23 A. For B.A.T. Industries, yes.

24 Q. All right. This document says in the cover

25 letter that it attaches revisions to the EIP plan;

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1 correct?

2 A. "As" -- "As promised, I have had the revisions
3 to the EIP Plan put into the attached amended
4 version. As I understand it, this now is the agreed
5 version of the 1994 Incentive Criteria." Yes, that's
6 what it says.

7 Q. And if you look at the next page, you see the
8 EIP performance ranges that he is referring to;
9 correct?

10 A. The next page, yes, is headed "BROWN &
11 WILLIAMSON, 1994 EIP PERFORMANCE RANGES," yes.

12 Q. All right. And if we look at the next page that
13 ends with Bates number 066, that is the beginning of
14 the long-term performance objectives for Brown &
15 Williamson that were approved by B.A.T. Industries;
16 correct?

17 A. I'm sorry. If you're going to ask me questions
18 on the document, which I don't recall having seen, I
19 would like to have the opportunity to read it before
20 I answer blind on this. I -- I really haven't -- I
21 don't recall having seen this document, so I would
22 like, please, just to be able to --

23 Q. That's fine.

24 A. -- to read it.

25 MS. WIVELL: And in the meantime, I need to

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1 take a rest room break, so excuse me.

2 THE REPORTER: Off the record, please.

3 (Recess taken.)

4 (Plaintiffs' Exhibit 652 was marked
5 for identification.)

6 BY MS. WIVELL:

7 Q. Sir, directing your attention at the page that
8 ends with Bates number 066.

9 A. Yes.

10 Q. All right. That is the beginning of the
11 long-term performance objectives for Brown &
12 Williamson which were approved by B.A.T. Industries;
13 correct?

14 A. I believe that -- well I can't dispute that. I
15 can't confirm it. It would seem reasonable to
16 suggest that since it is attached to a letter, is
17 referred to in a -- well actually I'm not sure now,
18 now I say that, because when I look back at the
19 letter, the letter refers to revisions to the EIP
20 plan put into the attached amended version, and what
21 is in fact attached here is Brown & Williamson 1994
22 EIP performance ranges and -- and then there is also
23 attached Brown & Williamson long-term performance
24 object -- objectives ALTP. So I'm -- I'm not
25 entirely sure that document Bates numbered 191001066,

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1 which is the page you've referred to, is actually
2 part of the same package which is referred to in the
3 covering letter because the covering letter is quite
4 clear in talking about a Brown & Williamson 1994 EIP
5 plan and the reference in the paragraph to the
6 attachment seems only to make reference to the EIP
7 plan.

8 So I'm not really in a position to confirm or
9 deny what you say, but while we're on the subject --
10 and I mentioned the EIP plan because it's referred to
11 here and it's attached to the letter -- you'll recall
12 in the previous answer I talked about the flexibility
13 which is inherent in the whole process of
14 establishing the bonus performance which are payable
15 to directors of the operating companies, and I think
16 I mentioned to you that these things are not hard and
17 fast. There is a degree of flexibility built into
18 these matters.

19 And if I could just direct your attention, if I
20 may respectfully do so, to the document which bears
21 the Bates number 191001065, which is the second page
22 of the Exhibit 651, if you look at the top line or --
23 well you'll see there's a heading "BROWN &
24 WILLIAMSON, 1994 EIP PERFORMANCE RANGES," brackets,
25 "(Dollars in Millions," comma, "U.K. Basis)," close

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1 brackets. Then you'll see there are, I think,
2 five -- six column headings. You will see that under
3 the column heading -- the fourth column heading
4 along, which starts with the word "COMM," which I
5 take to be "commendable," you will see that the
6 figure given for trading profit is 446.1, which I
7 think is a -- a dollar figure. You will see there's
8 an asterisk by it and it says at the bottom of the
9 page where the asterisk is marked that "The" -- and I
10 quote, "The Trading Profit requirements are on the
11 basis of no price increases or decreases as a result
12 of another 'trade war' during the year. If there are
13 any increases obtained then" the "targets will be
14 adjusted."

15 And that, as I say, demonstrates the degree of
16 flexibility. The -- the trade war referred to there
17 is, I believe, a reference back to the circumstances
18 which arose in 1993, in April 1993, on a day which
19 has become well known as Marlboro Friday, which was
20 when Philip Morris, the owner of -- I'm not sure
21 whether it's Philip Morris Inc. or Philip Morris
22 U.S., but nevertheless Philip Morris reduced the
23 price of its premium-brand cigarette, Marlboro,
24 precipitating a major price war amongst the U.S.
25 tobacco manufacturers, and Brown & Williamson had a

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1 substantial share of the value-for-money segment,
2 which is the lower end of the market, and the
3 value-for-money segment had gained a very substantial
4 foothold. And in order to reassert the dominant
5 market share position of Marlboro, Philip Morris
6 decided to heavily discount their brand with the
7 result that it led to substantial discounting by
8 Brown & Williamson of its value-for-money brands,
9 causing a substantial reduction in its overall
10 trading profit.

11 And this document is simply a reflection of
12 those sorts of circumstances and -- and is saying
13 that where those circumstances occur, then the
14 objectives which we, B.A.T. Industries, have agreed
15 with you, Brown & Williamson, against which we will
16 judge your bonus payments will obviously be adjusted
17 in the event of unforeseen circumstances.

18 Q. Move to strike that speech.

19 Sir, would you please turn to the page that ends
20 with Bates number 070. There is a memo from Tom
21 Sandefur to the vice president and directors;
22 correct?

23 A. There is a memorandum, yes, yes.

24 Q. And it starts "The official 1994 Performance
25 Criteria and Long-Term Objectives have now been

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1 approved by BAT"; correct?

2 A. That's what the document states.

3 Q. And the "BAT" refers to B.A.T. Industries,

4 doesn't it, sir?

5 A. I simply don't know. I can't deny or confirm.

6 Q. And it says "A copy of the Long-Term Objectives

7 is attached"; right?

8 A. It says "A copy of the Long-Term Objectives is

9 attached," yes.

10 Q. And if you turn to page 071, you see a -- a copy

11 of the long-term performance objectives that were

12 approved by B.A.T. Industries; isn't that true, sir?

13 A. Sorry, can you repeat the question, please.

14 Q. Yes. And if you turn to page 071, you see a

15 copy of the long-term performance objectives that

16 were approved by B.A.T. Industries for Brown &

17 Williamson; correct?

18 A. At page 071 I see a document headed "BROWN &

19 WILLIAMSON, LONG-TERM PERFORMANCE OBJECTIVES." I

20 don't immediately see any reference in that document

21 to these long-term performance objectives having been

22 approved by B.A.T. Industries.

23 Q. Sir, that is the same document that begins at

24 page 066, which is attached as the third page to

25 Mr. Herter's letter; correct?

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1 MS. McGARRY: I -- I'm just going to object
2 here. The witness had expressed a desire to read the
3 entire document before he was questioned on it.
4 During a break I think he was led to believe there
5 was going to be a question that he could answer
6 without reading it, and therefore he didn't read it,
7 but now we've gone much further, and before he
8 answers questions about this Sandefur memorandum, I
9 think the witness should be afforded the time he
10 needs to read it.

11 MS. WIVELL: Then I withdraw the question.
12 Sir, could you hand the witness -- no.

13 BY MS. WIVELL:

14 Q. You attended a board meeting of B.A.T.
15 Industries' board at which Mr. Sandefur's testimony
16 before the U.S. Senate subcommittee headed by
17 Congressman Waxman was addressed; correct?

18 A. I believe I have attended a board meeting and
19 it's certainly conceivable that Mr. Sandefur's
20 testimony before Congressman Waxman was discussed.
21 Yes, it's certainly conceivable. I can't confirm
22 absolutely, but I wouldn't be surprised if that were
23 the case.

24 Q. Was the board concerned that Mr. Sandefur denied
25 cigarettes were addictive when he testified before

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1 the U.S. Senate subcommittee?

2 MS. McGARRY: Objection, assumes facts not
3 in evidence.

4 A. Sorry, can you repeat the question for me.

5 Q. Yes. Was the board concerned that Mr. Sandefur
6 denied cigarettes were addictive when he testified
7 before the U.S. Senate subcommittee?

8 MS. McGARRY: Objection.

9 A. Well I can't -- you know, I -- I think I
10 indicated earlier that I -- you know, it's
11 conceivable that Mr. Sandefur's testimony was
12 discussed at a meeting of the board at which I was
13 present, but I -- I don't have a particular
14 recollection now as to what was discussed about
15 Mr. Sandefur's testimony, so I would be speculating
16 if I actually said what the board thought, and that's
17 my answer.

18 MS. WIVELL: Would you hand the witness
19 Exhibit 650, please -- or 652, is it?

20 THE REPORTER: Yes.

21 MS. McGARRY: Sorry, could we hear from the
22 reporters what time is left?

23 (Indication by video technician as to
24 the amount of deposition elapsed time.)

25 MS. McGARRY: Three minutes. Thank you.

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1 BY MS. WIVELL:

2 Q. Sir, showing you what's been marked as
3 Plaintiffs' Exhibit 652, this is a document you wrote
4 entitled "B.A.T. INDUSTRIES PLC, Reporting Minutes";
5 correct?

6 MS. McGARRY: Thank you.

7 A. Yes, I think that's a -- a correct -- yes,
8 correct categorization of the document. Yes, I did
9 write it.

10 Q. All right. And you wrote it in your position as
11 company secretary for B.A.T. Industries; right?

12 A. No, that's not actually correct. I wrote it in
13 my capacity as secretary of a -- essentially a
14 luncheon club which is held every Monday or almost
15 every Monday at B.A.T. Industries, and it is a -- a
16 luncheon which is held between the executive
17 directors of the company who happen to be present at
18 the time and the various heads of departments, the
19 purpose of which is to basically keep people in the
20 company, the senior managers within B.A.T.
21 Industries, up to date with major events or events of
22 interest about the company and about its subsidiaries
23 which they would like to be aware of or which they
24 may in fact have acquired information about through
25 other sources.

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1 Q. And there was a discussion at this meeting about
2 Mr. Sandefur's evidence to the congressional
3 subcommittee headed by Congressman Waxman; right?

4 A. Yes, minute four indicates that that was -- that
5 that was the case, yes.

6 Q. And at this meeting was there concern expressed
7 that Mr. Sandefur had lied to the U.S. Senate?

8 MS. McGARRY: Objection, assumes facts not
9 in evidence.

10 A. I don't recall any concern having been
11 expressed, but then I don't recall the nature of the
12 discussion which took place. This discussion which
13 is recorded here at 27th of June 1994 occurred over
14 three years ago. I can't possibly remember what was
15 said in the -- in the conversation. The minute I
16 think speaks for itself. It says "There was a
17 discussion on Mr Sandefur's evidence to the
18 Congressional Sub-Committee headed by Congressman
19 Waxman" I can't go further than that.

20 Q. Well you understand, sir, that Mr. Sandefur
21 testified that cigarette smoking was not addictive?

22 MS. McGARRY: Objection. Can you tell me
23 what Mr. Sandefur's testimony as a B&W officer before
24 the Waxman Committee in the United States has to do
25 with jurisdiction by the Minnesota court over a U.K.

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1 company that he didn't work for? This is irrelevant
2 to jurisdiction. It's beyond the scope of the
3 notice.

4 MS. WIVELL: Counsel, I object to your
5 violation of the court's order, and you're wasting
6 time when you know we're under five minutes.

7 A. Can you repeat the question for me.

8 Q. Yes, sir.

9 Did you understand that Mr. Sandefur testified
10 that cigarette smoking was not addictive?

11 MS. McGARRY: Objection, assumes facts not
12 in evidence.

13 A. I -- I recall that Mr. Sandefur gave evidence to
14 the congressional committee headed by Mr. Waxman. I
15 cannot recall whether Mr. Sandefur's testimony was to
16 the effect that -- sorry, I've -- I've lost the
17 question in the -- can you just read -- read back the
18 question to me. I'm sorry, I'm --

19 Q. Well let me rephrase the question, sir.

20 Was there concern expressed at this meeting
21 concerning Mr. Sandefur's testimony to the Senate
22 committee that cigarette smoking was not addictive?

23 MS. McGARRY: Objection, asked and
24 answered.

25 A. I think I've already said that I can't

1 recollect, you know, what the discussion precisely
2 was about. The minute must speak for itself. "There
3 was a discussion on Mr Sandefur's evidence to the
4 Congressional Sub-Committee headed by Congressman
5 Waxman" This was -- I've already said this was
6 over three years ago. I can't be expected to
7 remember every single fact, every single discussion,
8 every single matter to which I have been privy in the
9 course of my carrying out my duties at B.A.T.
10 Industries. This is just too long in the past for me
11 to be able to tell you, you know, exactly what was
12 discussed at that meeting.

13 Q. So is it your testimony --

14 MS. McGARRY: Excuse me, I think we're out
15 of time.

16 MS. WIVELL: I have one question.

17 Q. Is it your testimony as you sit here today that
18 you don't remember anything that was said during the
19 meeting that's referred to here in note four on
20 Exhibit 652?

21 MS. McGARRY: Just answer that question
22 "yes" or "no." We're out of time. It's irrelevant
23 to jurisdiction in any event.

24 A. Sorry, can you -- you'll have to repeat the
25 question. Sorry.

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1 Q. All right.

2 MS. McGARRY: "Is it your testimony" --

3 MS. WIVELL: I'll read it, Counsel.

4 MS. McGARRY: Okay.

5 MS. WIVELL: Thank you.

6 Q. Is it your testimony as you sit here today that
7 you don't remember anything that was said during the
8 meeting that's referred to here in note four on
9 Exhibit 652?

10 MS. McGARRY: I assume you mean on the
11 subject of four, not in the meeting that's referred
12 to in note four. Right?

13 A. I --

14 MS. McGARRY: I object. The question is
15 vague and ambiguous.

16 A. I do not remember anything about what was said
17 in the meeting which is recorded here in these
18 minutes beyond what is recorded here.

19 MS. WIVELL: I have nothing further at this
20 time.

21 MS. McGARRY: Thank you.

22 THE REPORTER: Off the record, please.

23 (Discussion off the record.)

24 (Defendants' Exhibit 2908 was marked
25 for identification.)

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1 DIRECT EXAMINATION

2 BY MS. McGARRY:

3 Q. Mr. Wilson, do you recall Ms. Wivell asking you
4 questions about B.A.T. Industries' joint ventures in
5 biotechnology?

6 A. Yes, I do.

7 Q. And you recall asking -- being asked questions
8 about the joint venture with NPI?

9 A. Yes, I do.

10 Q. And you recall answering a question as to where
11 NPI conducted its research?

12 A. Yes, I do.

13 Q. Do you recall what your answer to that question
14 was?

15 A. I don't recall precisely, save that I mentioned
16 that I believe research had been conducted in South
17 America, and I think I said that some analysis had
18 been carried out in Salt Lake City.

19 Q. Well, sir, was any biotechnology research
20 conducted in Salt Lake City by this joint venture, to
21 your knowledge?

22 A. Not to my knowledge, no.

23 Q. Do you have any understanding of the nature of
24 the analysis that was conducted in Salt Lake City?

25 A. Yes, I do.

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1 Q. What was the nature of that analysis?

2 A. The plants which were the subject of the
3 biotechnology research in South America were --
4 before that research were sent to -- before that
5 research was conducted were sent to Salt Lake City
6 for testing for biological purity.

7 Q. And after the plants were tested for biological
8 purity, where, if anywhere, did they go for
9 research?

10 A. I believe they were sent back to the joint
11 venture in South America for research.

12 MS. McGARRY: I have no further questions
13 of the witness.

14 MS. WIVELL: Let me have a minute. Can we
15 go off the record.

16 THE REPORTER: Off the record, please.

17 (Discussion off the record.)

18 ADVERSE EXAMINATION

19 BY MS. WIVELL:

20 Q. Did B.A.T. Industries pay the Salt Lake City
21 research firm to do the testing for biological purity
22 that you just spoke about?

23 A. I do not know the answer to that question. I --
24 I do not know.

25 Q. It would be a reasonable expectation that they

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1 would, wouldn't it, sir?

2 A. It would not --

3 MS. McGARRY: Objection.

4 A. It would not be a reasonable expectation that
5 they would.

6 Q. Why is that?

7 A. Because I previously testified that the research
8 in question was done by the joint venture in -- with
9 the South American -- in South America with a company
10 in South America, not B.A. -- not B.A.T. Industries.
11 So well I can't understand why B.A.T. Industries
12 should be paying for the biological testing, but as
13 I've said to you, I have no knowledge. I can't
14 confirm or deny. I simply don't know.

15 Q. Well, sir, isn't it a fact that Alan Heard
16 worked on that biotechnology project involving D --
17 involving NIP --

18 MS. McGARRY: NPI. I --

19 MS. WIVELL: Strike that.

20 MS. McGARRY: -- object. It's beyond the
21 scope of the direct.

22 Q. And, sir, isn't it a fact that Alan Heard worked
23 on that biotechnology project involving NI -- NPI on
24 behalf of B.A.T. Industries?

25 MS. McGARRY: I object. It's beyond the

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1 scope of the direct. I'll permit the witness to
2 answer this question.

3 A. I'm sorry, could you read the question back to
4 me, please.

5 Q. Yes. Isn't it a fact that Alan Heard worked on
6 that biotechnology project involving NPI on behalf of
7 B.A.T. Industries?

8 MS. McGARRY: Same objection.

9 A. I'm not sure what you mean by "worked on" and
10 I'm not sure what you mean by "project." I've
11 testified about B.A.T. Industries' interests in a
12 joint venture, but I'm not sure what you mean by
13 those terms that I referred to.

14 MS. McGARRY: Does this document have to do
15 with the testing of plants done in Salt Lake City?
16 The only cross-examination I did was to clarify the
17 earlier testimony on that very specific point. I
18 don't think the court order allows you to use that to
19 go way beyond the scope of my questions and get
20 another two hours on your deposition. You ran
21 through your ten.

22 (Plaintiffs' Exhibit 653 was marked
23 for identification.)

24 BY MS. WIVELL:

25 Q. Sir, showing you what's been marked as

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1 Plaintiffs' Exhibit 653, this is a document entitled
2 "Biotechnology Project, A.L. Heard," that begins
3 with Bates number 109873283; correct?

4 A. Correct.

5 Q. Sir, you've seen this document before, haven't
6 you?

7 A. I believe I have seen this document before,
8 yes.

9 Q. Would you turn to the page that ends with Bates
10 number 285.

11 MS. McGARRY: Was this a document
12 predesignated for the deposition?

13 MS. WIVELL: It most certainly was,
14 Counsel.

15 MS. McGARRY: My response to my other
16 question, you didn't answer that, but as far as I can
17 tell, there is nothing in this document that relates
18 to Salt Lake City or the testing of biological purity
19 of plants.

20 BY MS. WIVELL:

21 Q. Do you have page 285, sir?

22 A. I do, yes.

23 Q. And there do you see the reference to "At
24 present BAT Industries is evaluating two issues"?
25 Right?

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1 A. I do see that, yes.

2 Q. And it --

3 The first involves "the potential for plant
4 biotechnology in Europe - a study conducted jointly
5 with NPI"; correct?

6 A. I'm sorry, I'm not going to answer questions on
7 this document until I can read the document. Please
8 may I read the document?

9 Q. Certainly.

10 A. Thank you.

11 (Witness reviews Plaintiffs' Exhibit 653.)

12 Q. You've now read the document?

13 A. Yes.

14 Q. Sir, the first point --

15 The first issue being evaluated that's referred
16 to in the middle of the page that ends with Bates
17 number 285 is the potential for plant technology in
18 Europe; right?

19 A. "At present BAT Industries is evaluating two
20 issues:

21 "i) the potential for plant biotechnology in
22 Europe"

23 Q. And it goes on to say "a study conducted jointly
24 with NPI"; correct?

25 A. It goes on to say "a study conducted jointly

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1 with NPI."

2 Q. And in fact, sir, it was B.A.T. Industries that
3 was, as this document says, conducting a study
4 jointly on plant technology with NPI; isn't that
5 true?

6 MS. McGARRY: Objection.

7 A. I'm sorry, can you read the question back to me,
8 please.

9 Q. Yes. And in fact, sir, it was B.A.T. Industries
10 that was, as the document states, conducting a study
11 jointly on plant technology with NPI; isn't that
12 true?

13 A. No, that's not true. That's not what the
14 document says. That's a mischaracterization. What
15 the document says is "the potential for plant
16 biotechnology in Europe." It does not talk about a
17 survey on plant biotechnology in Europe. It talks
18 about the potential for plant biotechnology in Europe
19 and then goes on to state -- to say "a study
20 conducted jointly with NPI." That's quite different,
21 I think, from the point you put to me with respect.

22 Q. And then it talks about getting the outcome of
23 the study, doesn't it, sir?

24 MS. McGARRY: Objection. The document
25 speaks for itself. This is beyond the scope of the

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1 direct.

2 A. The document refers -- I'm -- I'm going to read
3 from the document. The document says "The outcome
4 from this study, expected in two months, will tell us
5 whether we wish to enter Europe and whether NPI will
6 be available as technology partner." That's what the
7 document says, the document which was written by

8 A. L. Heard on the 12th -- well it's a -- a document
9 by A. L. Heard talking about a visit which he
10 conducted to B.A.T. Hamburg, which I think is in fact
11 the German company B.A.T Cigarettenfabriken, and
12 Mr. Heard I think was in the employ of BATCO.

13 Q. Well, sir, let me ask you this: Is this a
14 different study with NPI than the study that we
15 talked about during your direct examination -- or
16 your cross-examination?

17 MS. McGARRY: Objection.

18 A. I don't know that we talked about a study in my
19 examination. I think we talked about a joint venture
20 in South America between a B.A.T. company and NPI. I
21 think that's different from a study.

22 Q. Well let me ask you this: Did B.A.T. Industries
23 conduct a study with NPI on the issue of plant
24 biotechnology?

25 MS. McGARRY: Objection, asked and

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1 answered, beyond the scope of the direct
2 examination.

3 A. The document says what the document says. It
4 does not say a study conducted by B.A.T. Industries
5 jointly with NPI; it may have been a study conducted
6 by B.A.T. Industries jointly with NPI.

7 What the document actually talks about, says
8 itself, "At present BAT Industries is evaluating two
9 issues." One of the issues which B.A.T. Industries
10 is reported in Mr. Heard's document as evaluating is
11 "the potential for plant biotechnology in Europe - a
12 study conducted jointly with NPI." For all I know,
13 that study may have been conducted by BATCO with
14 NPI. There is no reason to suggest otherwise, and
15 that -- that's essentially what the document talks
16 about.

17 And if I may go further, at the bottom or
18 towards the bottom of the page there is a paragraph
19 which begins "Unfortunately the activity in Hamburg
20 is currently too small to constitute a viable
21 technology base for a commercial operation of
22 interest to BAT Industries" And you will recall
23 that -- from previous testimony I gave that I
24 mentioned that Sir Patrick Sheehy had an interest in
25 the subject of biotechnology in the mid-1980s and was

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1 interested, I believe, in determining whether
2 biotechnology in itself was a new area of business in
3 which the B.A. -- in which B.A.T. Industries could
4 invest; in other words, whether there was a new set
5 of operating -- a new operating company, a new type
6 of operation in which B.A.T. Industries could invest
7 its money to grow the business for the value --
8 for -- value for its public stockholders. I think
9 that's what I said earlier, and this seems to me to
10 bear that out.

11 Q. Sir --

12 MS. McGARRY: Ms. Wivell, I'm going to ask
13 whether you have any questions for this witness
14 concerning the work that was done in Salt Lake City,
15 in which the witness can stay up until 5:30 to answer
16 such questions. If not, you're going well beyond the
17 scope of the cross -- of the direct examination, and
18 we will not stay any further.

19 MS. WIVELL: Well I disagree, Counsel. He
20 opened the door by answering -- and I can find it if
21 we'd like to take the time, but that B.A.T.
22 Industries was not involved directly with NPI. This
23 document directly contradicts that testimony, and
24 that's what I am trying to find out right now.
25 BY MS. WIVELL:

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1 Q. Sir --

2 MS. McGARRY: That's not what the witness's
3 testimony is doing. You completely mischaracterize
4 it.

5 THE WITNESS: I would like to take a
6 break. I would like to get some more water, please.
7 May I?

8 MS. McGARRY: Sure.

9 THE REPORTER: Off the record, please.

10 (Recess taken.)

11 BY MS. WIVELL:

12 Q. Sir, you previously testified that the research
13 in question done by the joint venture was not done by
14 B.A.T. Industries. Sir, isn't it a fact that B.A.T.
15 Industries did conduct this study that's referred to
16 here jointly with NPI?

17 MS. McGARRY: Objection, asked and
18 answered.

19 A. I -- I think I've already said before that
20 the -- that the -- I think the document speaks for
21 itself. What I have explained, I hope I had
22 explained, but obviously not clearly enough and I'll
23 try to help you again with this, is that the
24 document, which is a document written by Mr. Heard,
25 points to the fact or perhaps -- fact -- I don't know

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1 whether it's a fact or not, but it says that B.A.T.
2 Industries is evaluating two issues. It says that
3 one of the issues that B.A.T. Industries is
4 evaluating is "the potential for plant biotechnology
5 in Europe - a study conducted jointly with NPI."

6 And what I think I have said before is that that
7 suggests to me that B.A.T. Industries is evaluating a
8 study that has been conducted jointly with NPI, in
9 my -- in my view, almost certainly or very likely
10 with BATCO, and I -- I think, as I mentioned
11 before -- and I want to explain the rationale of this
12 because it's important to remember in the context of
13 a company such as B.A.T. Industries, which does not
14 manufacture and market cigarette products, that
15 B.A.T. Industries itself would not be conducting
16 research. It's most unlikely that B.A.T.
17 Industries -- Industries itself would be conducting a
18 study jointly with NPI on the subject of plant
19 biotechnology because I think we probably all
20 recognize that plant biotechnology is a scientific
21 matter and B.A.T. Industries, to my knowledge, has
22 never employed scientists on its staff and therefore
23 wouldn't be equipped to carry out such a study with
24 NPI. It would, as would seem logical, look to its
25 operating subsidiaries for advice and guidance on

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1 matters related to issues such as plant biotechnology
2 to the extent that it needed that sort of advice,
3 presumably if it were in connection with the tobacco
4 plant.

5 So I -- I'm -- I'm not convinced, as I said
6 before, that this document means what you have
7 suggested it means, and I -- I don't think I can
8 answer it any more fairly than I have.

9 Q. Well, sir, if you take a look at the end of the
10 second complete paragraph of this document, you see
11 that Mr. Heard referred to NPI as, quote, "the
12 technology partner selected by BAT Industries as
13 joint venture partner for our potential Latin
14 American businesses"; isn't that true, sir?

15 MS. McGARRY: Sir -- Martha, you're --
16 you're going beyond my direct and now you claim you
17 had to ask questions to follow up and clarify an
18 answer Mr. Wilson gave you, but now you're going
19 beyond that. I'm directing the witness not to
20 answer. If you have any questions about what was
21 done --

22 MS. WIVELL: Excuse me. On what grounds
23 are you directing the witness not to answer?

24 MS. McGARRY: Are you done interrupting
25 me? I'll finish. Are you done?

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1 If you have questions about what was done in
2 Salt Lake City, the witness will answer. If you
3 don't have any questions coming out of what my direct
4 was about, the deposition is over.

5 MS. WIVELL: Then call the court.

6 MS. McGARRY: The deposition is over.
7 Apparently Ms. Wivell doesn't have any questions.

8 MS. WIVELL: No, I would like an answer to
9 my question, and then I will be done.

10 MS. McGARRY: Yeah, that's what you said
11 before.

12 MS. WIVELL: So, Counsel, you're
13 unilaterally terminating this deposition?

14 MS. McGARRY: I directed the witness not to
15 answer your last question, which you --

16 MS. WIVELL: So you --

17 MS. McGARRY: -- said was your only
18 question.

19 MS. WIVELL: So you've taken off your
20 mike. You're getting -- you're leaving?

21 MS. McGARRY: Yeah.

22 MS. WIVELL: Your son is here, so you're
23 done with the deposition; is that right?

24 MS. McGARRY: That's not the reason I gave
25 you, Martha.

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1 MS. WIVELL: I would just like the record
2 to reflect counsel is leaving the room.

3 MS. McGARRY: Counsel is directing the
4 witness to leave the room. We're done.

5 BY MS. WIVELL:

6 Q. Well I would like the record to reflect then
7 that the document states, quote --

8 MS. McGARRY: You can leave. She's just
9 reading.

10 Q. -- "... NPI, the technology partner selected by
11 BAT Industries as joint venture partner for our
12 potential Latin American businesses," doesn't it,
13 sir?

14 MS. McGARRY: We're leaving. The
15 deposition is over.

16 MS. WIVELL: Well I object to this process,
17 and I'm sorry that this deposition interferes with
18 your personal and private life, Counsel, so that you
19 feel you need to leave.

20 THE REPORTER: Off the record, please.

21 (Deposition recessed at 5:23 o'clock
22 p.m.)

23

24

25

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1 C E R T I F I C A T E

2 I, William C. LaBorde, hereby certify that
3 I am qualified as a verbatim shorthand reporter; that
4 I took in stenographic shorthand the testimony of
5 DAVID WILSON at the time and place aforesaid; and
6 that the foregoing transcript consisting of pages 255
7 through 494, Volume II, is a true and correct, full
8 and complete transcription of said shorthand notes,
9 to the best of my ability.

10 Dated at Las Vegas, Nevada, this 18th day
11 of August 1997.

12

13

14

15 WILLIAM C. LaBORDE

16 Registered Professional Reporter

17 Notary Public

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1 C E R T I F I C A T E

2 I, DAVID WILSON, the deponent, hereby
3 certify that I have read the foregoing transcript
4 consisting of pages 255 through 494, Volume II, and
5 that said transcript is a true and correct, full and
6 complete transcription of my deposition, except per
7 the attached corrections, if any.

8

9 (Please check one.)

10

11 ____ Yes, changes were made per the attached
12 (no.) ____ pages.

13

14 ____ No changes were made.

15

16

17 DAVID WILSON

18 Deponent

19

20 Sworn and subscribed to before me this day
21 of 199__.

22

23

24 Notary Public

25 My commission expires: (WCL)

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